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# Ohio Jury Instructions— Criminal

Publication 4346

Release 22S1

June 2022

### HIGHLIGHTS

**This release includes revisions to the following:**

- Chapter CV 309 — Instructions During Trial
- Chapter CV 449 — Fraud
- Chapter CR 417 — Definitions
- Chapter CR 421 — Defenses
- Chapter CR 503 — Homicide and Assault
- Chapter CR 517 — Offenses Against the Public Peace
- Chapter CR 521 — Offenses Against Justice and Public Administration
- Chapter CR 527 — Miscellaneous Offenses

**Chapter CV 309** replaces one instruction on limited purpose evidence.

**Chapter CV 449** revises one in-

struction on fraud.

**Chapter CR 417** includes one revised instruction on cause; natural consequences.

**Chapter CR 421** replaces one instruction on self-defense, defense of residence — use of non-deadly force R.C. 2901.05, one instruction on defense of another — use of non-deadly force R.C. 2901.05, one instruction on self-defense, defense of residence — use of deadly force R.C. 2901.05, one instruction on defense of another against danger of death or great bodily harm — use of deadly force R.C. 2901.05, and one instruction on presumption — self-defense, defense of another — when in a residence or vehicle, use of deadly force R.C. 2901.05.

**Chapter CR 503** revises one instruction on hazing; adds one new instruction on hazing; and adds one



new instruction on failure to report hazing R.C. 2903.311.

**Chapter CR 517** adds new instruction on nonconsensual dissemination of private sexual images R.C. 2917.211.

**Chapter CR 521** includes one revised instruction on failure to comply with an order or signal of a police

officer R.C. 2921.331; deletes one instruction on harassment by inmate; and revises one instruction on harassment with a bodily substance R.C. 2921.38.

**Chapter CR 527** deletes one instruction on duty to report escape of certain animals R.C. 2927.21.

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Publication 4346 Release 22S1CRI

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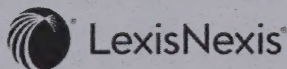
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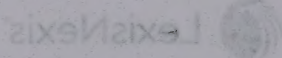
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# OHIO JURY INSTRUCTIONS

*A collection of STANDARD JURY  
INSTRUCTIONS in civil and criminal  
cases prepared by the Jury Instructions  
Committee of the Ohio Judicial  
Conference.*

CRIMINAL INSTRUCTIONS  
GENERAL  
SPECIAL TOPICS



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
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# ***PREFACE TO OHIO JURY INSTRUCTIONS***

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This preface introduces a new revised edition of the Ohio Jury Instructions (OJI) reorganized into self-contained civil and criminal volumes. The former Volume 1 “General Instructions” has been eliminated. Applicable general instructions are included in the civil and criminal volumes. There is one civil volume, now organized by general subject matter areas, and one criminal volume; however, there are three binders. The criminal volume is contained in two binders with a separate tab for “Traffic” offenses.

The purpose of the reorganization is to simplify use of OJI by judges and practitioners. Users will no longer have to switch back and forth between the current Volume 1 “General Instructions” and the substantive instructions contained in the remaining volumes. Also, the numbering of all instructions has been revised and simplified. Instructions will now be identified as “CV” (Civil) and “CR” (Criminal). For example, current 4 OJI 503.01, dealing with Aggravated Murder, becomes CR 503.01. A “Correlation Table” is included in each volume containing previous and new section numbers. Both volumes have newly designed, slightly larger loose-leaf binders. The format of individual instructions has not changed.

## **COMMENT**

These first two paragraphs summarize the current reorganization. The balance of the preface provides historical perspective.

Ohio Jury Instructions, commonly called “OJI”, was originally the project of Judges Robert L. McBride and Eugene R. McNeill. Its purpose was to present, in the same place in a single set of books, the instructions prepared by judges along with specific examples of such instructions, as well as others that were given in actual cases. The project was a joint effort of the Ohio Judicial Conference and the Ohio Common Pleas Judges Association. It was believed that the Bench and the Bar of Ohio should have the benefit, as well as the economy and convenience, of having all jury instruction material in one place in a single set of books. The jury instruction committee was composed exclusively of judges. In the event that the Committee was unable to develop a “standard” instruction, instructions were provided from individual cases. In theory, this method of combined presentation permitted the Committee to take the time required to develop its “standard” material through provisional drafts and experimental use prior to publication. The consensus among OJI Committee members was that the work of an individual judge would always be helpful until such time as “standard” instructions were developed.

Then, as now, the copyright was owned by the Ohio Judicial Conference, thereby providing for the permanent supervision by the judiciary of the development and publication of the OJI jury instructions.

It was the hope of all parties involved in 1958 that the Ohio Jury Instructions (OJI) would be helpful to the Bench and to the Bar and that the usefulness of the work would improve over the years with the continued cooperation of those interested in the instructional administration of the judicial system in the State of Ohio.



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## PREFACE TO OHIO JURY INSTRUCTIONS

### COMMENT

Drawn from "THE NEW OJI" by Robert L. McBride, Chairman, and Eugene R. McNeill, Vice Chairman.

In 1960, a "*Standard Civil Outline—Negligence*" was released. A companion criminal outline followed in 1962. The responsibility for publication of the instructions was assigned to the Ohio Judicial Conference to relieve the Ohio Common Pleas Judges Association of the printing, sale and distribution of the material.

A standard or pattern jury instruction is a brief, accurate, and complete statement in simple and understandable language covering a single situation, purpose, or point of law. Interest and comprehension by the jury are the first considerations. Technical expressions of decision, partisan language, and references to evidence are eliminated. Exceptional situations are set out separately for use when required by special facts. The Committee recognizes the necessity for direct and simple English. "A court in considering the propriety of any jury instruction must always bear in mind that the purpose of the jury instruction is to clarify the issues and the jury's position in the case. It must be remembered that juries are composed of ordinary people on the street, not trained grammarians, and that fine distinctions in the meaning of words or phrases are not ordinarily recognized by the average layperson. Thus, in considering the propriety of any instruction, the meaning of the words used in the instruction must be thought of in their common meaning to the layperson and not what such words mean to the grammarian or to the trained legal mind." *Bahm v. Pittsburgh & Lake Erie RR. Co.* (1966), 6 Ohio St.2d 192.

### COMMENT

Drawn from *Preface to Volume I—1968*.

Three types of instruction appeared in OJI: (1) the "standard" or "pattern" instruction, though not necessarily titled as such; (2) the "approved" instruction, which is an instruction found in a particular case, and (3) the "new" instruction, which is a pattern instruction recommended by the Committee, but which has not yet withstood the test of time. OJI no longer uses these titles.

### COMMENT

Drawn from *Preface to Volume I—1983*.

In January 1987, the Ohio Jury Instructions Committee reorganized itself and adopted a plan for the revision of the civil instructions. Under the reorganization, the Committee consisted of an editorial board composed of trial and appellate judges with final approval of all material to be published in OJI, and the writing committees appointed ad hoc to draft new material and revisions. The Board also employed a law professor as an editorial consultant, whose task was to review all drafts, to evaluate their accuracy and scope, and to assure conformity with the Committee's Style Manual. The writing committees were composed of experienced and knowledgeable persons from the judicial, practicing, and academic branches of the profession, under the supervision of a member of the Editorial Board.

It was during this phase in the development of OJI that the use of Comments was broadened to advise OJI users of many matters deemed to be of major significance. During this phase, the

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## PREFACE TO OHIO JURY INSTRUCTIONS

Committee designated as “PROVISIONAL” those instructions published to be of assistance to the Bench and Bar of Ohio, but (of necessity) without specific judicial approval. OJI no longer designates instructions as “PROVISIONAL.” During this general time period, a software version of OJI became available for various personal computers.

### COMMENT

Drawn from “*Preface to Ohio Jury Instructions—1993.*”

In the words of former Chair Robert B. Ford, “ever shorter, ever plainer, ever fairer, this is the mission of OJI.” Although it is easy to state the goal, it is difficult to attain it. In Ohio, pattern jury instructions are not “pre-approved” by appellate courts. Therefore, it is sometimes difficult to use “plain English” because the Committee is required to use statutory and case law language in drafting instructions. The law is also evolving, and the ever-increasing number of statutes and cases constantly increases the volume of the Committee’s work.

The Committee has divided into Civil and Criminal Subcommittees and developed an informal protocol in order to meet the need for more and more instructions. The Ohio State Bar Association and its jury instructions committee have joined with the Ohio Judicial Conference in the ongoing effort to enhance this product. The combined effort has already generated numerous quality instructions, both civil and criminal. Multiple drafting committees using the talents of both Bench and Bar are now in place to draft and modify instructions. Other such drafting committees will be formed as needed.

Enhanced technology has also found its way into OJI. Most, if not all, of the OJI Committee’s members have laptop computers to aid their efforts. Use of projection and internet technology at subcommittee meetings has greatly enhanced the editing process. At present, OJI is published in print and CD versions by LexisNexis and on-line versions by LexisNexis, Westlaw, and Casemaker, thereby maximizing user access.

And so it goes . . . evolving, hopefully improving . . .



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225.39	OJI-CV 411.67
225.40	OJI-CV 411.69
225.41	OJI-CV 411.71
225.42	OJI-CV 411.73
225.43	OJI-CV 411.75
225.431	OJI-CV 411.77
225.44	OJI-CV 411.79
225.441	OJI-CV 411.81
225.45	OJI-CV 411.83
225.451	OJI-CV 411.85
225.452	OJI-CV 411.87
225.46	OJI-CV 411.89
225.47	OJI-CV 411.91
225.48	OJI-CV 411.93
225.481	OJI-CV 411.95
225.49	OJI-CV 411.97
225.50	OJI-CV 411.99
225.51	OJI-CV 411.101
225.52	OJI-CV 411.103
225.66	OJI-CV 411.105

Previous Instruction Number	New Edition Instruction Number
227.02	OJI-CV 411.107
227.021	OJI-CV 411.109
227.03	OJI-CV 411.111
229.01	OJI-CV 629.01
229.02	OJI-CV 629.03
239.01	OJI-CV 605.01
239.03	OJI-CV 605.03
239.05	OJI-CV 605.05
239.07	OJI-CV 605.07
239.09	OJI-CV 605.09
245.01	OJI-CV 407.01
245.03	OJI-CV 407.03
245.05	OJI-CV 407.05
245.07	OJI-CV 407.07
245.09	OJI-CV 407.09
245.11	OJI-CV 407.11
245.13	OJI-CV 407.13
245.15	OJI-CV 407.15
245.17	OJI-CV 407.17
245.19	OJI-CV 407.19
245.21	OJI-CV 407.21
245.23	OJI-CV 407.23
247.01	OJI-CV 713.01
252.01	OJI-CV 447.01
253.01	OJI-CV 501.01
253.03	OJI-CV 501.03
253.05	OJI-CV 501.05
253.07	OJI-CV 501.07
253.09	OJI-CV 501.09
253.11	OJI-CV 501.11
253.13	OJI-CV 501.13
253.15	OJI-CV 501.15
253.17	OJI-CV 501.17
253.19	OJI-CV 501.19
253.21	OJI-CV 501.21
253.23	OJI-CV 501.23
253.24	OJI-CV 501.25
253.25	OJI-CV 501.27
253.26	OJI-CV 501.29
253.27	OJI-CV 501.31
253.29	OJI-CV 501.33
253.31	OJI-CV 501.35
253.33	OJI-CV 501.37
253.35	OJI-CV 501.39



Previous Instruction Number	New Edition Instruction Number
255.01	OJI-CV 521.01
255.03	OJI-CV 521.03
257.01	OJI-CV 625.01
257.03	OJI-CV 625.03
257.05	OJI-CV 625.05
257.07	OJI-CV 625.07
264.01	OJI-CV 431.01
264.03	OJI-CV 431.03
264.05	OJI-CV 431.05
264.07	OJI-CV 431.07
265.01	OJI-CV 419.01
265.02	OJI-CV 419.03
266.01	OJI-CV 533.01
266.03	OJI-CV 533.03
266.05	OJI-CV 533.05
266.07	OJI-CV 533.07
266.09	OJI-CV 533.09
266.11	OJI-CV 533.11
266.15	OJI-CV 533.13
266.17	OJI-CV 533.15
266.19	OJI-CV 533.17
266.21	OJI-CV 533.19
266.23	OJI-CV 533.21
266.25	OJI-CV 533.23
266.27	OJI-CV 533.25
271.01	OJI-CV 453.01
271.03	OJI-CV 453.03
301.01	OJI-CV 609.01
301.03	OJI-CV 609.03
301.05	OJI-CV 609.05
301.07	OJI-CV 609.07
301.09	OJI-CV 609.09
301.11	OJI-CV 609.11
301.13	OJI-CV 609.13
301.15	OJI-CV 609.15
301.17	OJI-CV 609.17
301.19	OJI-CV 609.19
301.21	OJI-CV 609.21
301.23	OJI-CV 609.23
302.01	OJI-CV 537.01
302.03	OJI-CV 453.05
302.05 (claims arising before 4/09/03)	OJI-CV 537.05 (claims arising before 4/09/03)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
302.05 (claims arising on and after 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/7/05)
302.05 (claims arising on and after 4/9/03 but before 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/9/03 but before 4/7/05)
302.07	OJI-CV 537.07
302.09	OJI-CV 537.09
302.11	OJI-CV 537.11
302.13	OJI-CV 537.13
302.15	OJI-CV 537.15
302.17	OJI-CV 537.17
305.01	OJI-CV 437.01
307.01	OJI-CV 449.01
307.03	OJI-CV 449.03
307.05	OJI-CV 449.05
307.07	OJI-CV 449.07
307.09	OJI-CV 449.09
307.11	OJI-CV 449.11
307.13	OJI-CV 449.13
307.15	OJI-CV 449.15
307.17	OJI-CV 449.17
309.01	OJI-CV 441.01
309.03	OJI-CV 441.03
309.05	OJI-CV 441.05
309.07	OJI-CV 441.07
312.01	OJI-CV 425.01
312.03	OJI-CV 425.03
312.05	OJI-CV 425.05
312.07	OJI-CV 425.07
312.09	OJI-CV 425.09
312.11	OJI-CV 425.11
312.13	OJI-CV 425.13
312.15	OJI-CV 425.15
313.01	OJI-CV 637.01
313.03	OJI-CV 637.03
313.05	OJI-CV 637.05
313.07	OJI-CV 637.07
313.09	OJI-CV 637.09
313.11	OJI-CV 637.11
315.01	OJI-CV 509.01
315.02	OJI-CV 509.03
315.03	OJI-CV 509.05
315.04	OJI-CV 509.07
317.01	OJI-CV 701.01
317.03	OJI-CV 701.03



Previous Instruction Number	New Edition Instruction Number
317.05	OJI-CV 701.05
317.07	OJI-CV 701.07
317.09	OJI-CV 701.09
317.11	OJI-CV 701.11
317.13	OJI-CV 701.13
317.15	OJI-CV 701.15
319.01	OJI-CV 415.01
319.03	OJI-CV 415.03
319.05	OJI-CV 415.05
319.07	OJI-CV 415.07
319.09	OJI-CV 415.09
319.11	OJI-CV 415.11
323.01	OJI-CV 709.01
323.03	OJI-CV 709.03
323.05	OJI-CV 709.05
323.07	OJI-CV 709.07
323.09	OJI-CV 709.09
323.11	OJI-CV 709.11
323.13	OJI-CV 709.13
323.15	OJI-CV 709.15
323.17	OJI-CV 709.17
323.19	OJI-CV 709.19
323.21	OJI-CV 709.21
323.23	OJI-CV 709.23
323.25	OJI-CV 709.25
323.27	OJI-CV 709.27
323.29	OJI-CV 709.29
323.31	OJI-CV 709.31
323.33	OJI-CV 709.33
323.35	OJI-CV 709.35
323.37	OJI-CV 709.37
323.39	OJI-CV 709.39
323.41	OJI-CV 709.41
323.43	OJI-CV 709.43
323.45	OJI-CV 709.45
323.47	OJI-CV 709.47
323.49	OJI-CV 709.49
323.51	OJI-CV 709.51
323.53	OJI-CV 709.53
323.55	OJI-CV 709.55
323.57	OJI-CV 709.57
323.59	OJI-CV 709.59
323.61	OJI-CV 709.61
323.63	OJI-CV 709.63

Previous Instruction Number	New Edition Instruction Number
323.65	OJI-CV 709.65
325.01	OJI-CV 413.01
325.03	OJI-CV 413.03
325.05	OJI-CV 413.05
325.07	OJI-CV 413.07
325.09	OJI-CV 413.09
325.11	OJI-CV 413.11
327.01	OJI-CV 613.01
327.03	OJI-CV 613.03
327.05	OJI-CV 613.05
327.07	OJI-CV 613.07
327.11	OJI-CV 613.09
327.13	OJI-CV 613.11
327.15	OJI-CV 613.13
327.17	OJI-CV 613.15
327.19	OJI-CV 613.17
327.21	OJI-CV 613.19
327.23	OJI-CV 613.21
327.25	OJI-CV 613.23
327.27	OJI-CV 613.25
327.29	OJI-CV 613.27
327.31	OJI-CV 613.29
327.33	OJI-CV 613.31
327.35	OJI-CV 613.33
329.01	OJI-CV 529.01
330.01	OJI-CV 439.01
330.03	OJI-CV 439.03
330.05	OJI-CV 439.05
330.07	OJI-CV 439.07
330.09	OJI-CV 439.09
331.01	OJI-CV 417.01
331.03	OJI-CV 417.03
331.05	OJI-CV 417.05
331.07	OJI-CV 417.07
331.09	OJI-CV 417.09
331.11	OJI-CV 417.11
331.13	OJI-CV 417.13
331.15	OJI-CV 417.15
331.17	OJI-CV 417.17
331.19	OJI-CV 417.19
333.01	OJI-CV 421.01
333.03	OJI-CV 421.03
333.05	OJI-CV 421.05
333.07	REMOVED



Previous Instruction Number	New Edition Instruction Number
345.01	OJI-CV 621.01
345.03	OJI-CV 621.03
345.05	OJI-CV 621.05
345.07	OJI-CV 621.07
345.09	OJI-CV 621.09
345.11	OJI-CV 621.11
345.13	OJI-CV 621.13
348.01	OJI-CV 705.01
348.03(A)	OJI-CV 705.03
348.03(B)	OJI-CV 705.05
348.07	OJI-CV 705.07
348.09	OJI-CV 705.09
348.11	OJI-CV 705.11
348.13	OJI-CV 705.13
348.15	OJI-CV 705.15
349.01	OJI-CV 433.01
349.03	OJI-CV 433.03
349.05	OJI-CV 433.05
349.07	OJI-CV 433.07
349.09	OJI-CV 433.09
349.11	OJI-CV 433.11
349.13	OJI-CV 433.13
351.01	OJI-CV 451.01
351.03	OJI-CV 451.03
351.05	OJI-CV 451.05
351.07	OJI-CV 451.07
351.09	OJI-CV 451.09
351.11	OJI-CV 451.11
351.13	OJI-CV 451.13
351.15	OJI-CV 451.15
351.17	OJI-CV 451.17
351.19	OJI-CV 451.19
351.21	OJI-CV 451.21
351.23	OJI-CV 451.23
354.01	OJI-CV 601.01
354.03	OJI-CV 601.03
354.05	OJI-CV 601.05
354.07	OJI-CV 601.07
354.09	OJI-CV 601.09
355.01	OJI-CV 443.01
356.01	OJI-CV 445.01
356.03	OJI-CV 445.03
356.05	OJI-CV 445.05
356.07	OJI-CV 445.07

Previous Instruction Number	New Edition Instruction Number
356.09	OJI-CV 445.09
356.11	OJI-CV 445.11
356.13	OJI-CV 445.13
356.15	OJI-CV 445.15
356.17	OJI-CV 445.17
356.19	OJI-CV 445.19
356.21	OJI-CV 445.21
356.23	OJI-CV 445.23
356.25	OJI-CV 445.25
359.01	OJI-CV 513.01
359.03	OJI-CV 513.03
359.05	OJI-CV 513.05
359.07	OJI-CV 513.07
359.09	OJI-CV 513.09
362.01	OJI-CV 505.01
362.03	OJI-CV 505.03
362.05	OJI-CV 505.05
362.07	OJI-CV 505.07
362.09	OJI-CV 505.09
362.11	OJI-CV 505.11
362.13	OJI-CV 505.13
362.15	OJI-CV 505.15
362.17	OJI-CV 505.17
362.19	OJI-CV 505.19
362.21	OJI-CV 505.21
362.23	OJI-CV 505.23
362.25	OJI-CV 505.25
362.27	OJI-CV 505.27
362.29	OJI-CV 505.29
362.31	OJI-CV 505.31
362.33	OJI-CV 505.33
362.35	OJI-CV 505.35
362.37	OJI-CV 505.37
362.39	OJI-CV 505.39
362.41	OJI-CV 505.41
362.43	OJI-CV 505.43
362.45	OJI-CV 505.45
362.47	OJI-CV 505.47
362.49	OJI-CV 505.49
362.51	OJI-CV 505.51
362.53	OJI-CV 505.53
363.01	OJI-CV 633.01
363.03	OJI-CV 633.03
363.05	OJI-CV 633.05



Previous Instruction Number	New Edition Instruction Number
363.07	OJI-CV 633.07
363.09	OJI-CV 633.09
363.13	OJI-CV 633.11
365.01	OJI-CV 427.01
365.03	OJI-CV 427.03
365.05	OJI-CV 427.05
365.07	OJI-CV 427.07
365.09	OJI-CV 427.09
365.11	OJI-CV 427.11
365.13	OJI-CV 427.13
365.15	OJI-CV 427.15
365.17	OJI-CV 427.17
365.19	OJI-CV 427.19
369.01	OJI-CV 517.01
369.03	OJI-CV 517.03
369.05	OJI-CV 517.05
369.07	OJI-CV 517.07
369.09	OJI-CV 517.09
369.11	OJI-CV 517.11
369.13	OJI-CV 517.13
369.15	OJI-CV 517.15
369.17	OJI-CV 517.17

# CRIMINAL INSTRUCTIONS CORRELATION TABLE

Previous Instruction Number	New Edition Instruction Number
1.01	OJI-CR 101.01
1.03	OJI-CR 101.03
1.05	OJI-CR 101.05
1.07	OJI-CR 101.07
1.09	OJI-CR 101.09
1.11	OJI-CR 101.11
1.13	OJI-CR 101.13
1.15	OJI-CR 101.15
1.17	OJI-CR 101.17
1.19	OJI-CR 101.19
1.21	OJI-CR 101.21
1.23	OJI-CR 101.23
1.25	OJI-CR 101.25
1.27	OJI-CR 101.27
1.29	OJI-CR 101.29
1.31	OJI-CR 101.31
1.33	OJI-CR 101.33
1.35	OJI-CR 101.35
1.37	OJI-CR 101.37
1.39	OJI-CR 101.39
1.41	OJI-CR 101.41
1.43	OJI-CR 101.43
1.45	OJI-CR 101.45
1.47	OJI-CR 101.47
1.49	OJI-CR 101.49
1.51	OJI-CR 101.51
1.53	OJI-CR 101.53
1.55	OJI-CR 101.55
1.57	OJI-CR 101.57
1.59	OJI-CR 101.59
1.61	OJI-CR 101.61
1.63	OJI-CR 101.63
1.65	OJI-CR 101.65
1.67	OJI-CR 101.67
1.69	OJI-CR 101.69
1.71	OJI-CR 101.71
1.73	OJI-CR 101.73
1.75	OJI-CR 101.75
1.77	OJI-CR 101.77
1.79	OJI-CR 101.79
1.81	OJI-CR 101.81
1.83	OJI-CR 101.83



Previous Instruction Number	New Edition Instruction Number
1.85	OJI-CR 101.85
1.87	OJI-CR 101.87
401.01	OJI-CR 301.01
401.02	OJI-CR 301.03
401.03	OJI-CR 301.05
401.04	OJI-CR 301.07
402.10	OJI-CR 401.01
402.11	OJI-CR 401.03
402.12	OJI-CR 401.05
402.20	OJI-CR 401.07
402.21	OJI-CR 401.09
402.25	OJI-CR 401.11
402.30	OJI-CR 401.13
402.50	OJI-CR 401.15
402.51	OJI-CR 401.17
402.52	OJI-CR 401.19
402.53	OJI-CR 401.21
402.60	OJI-CR 401.23
402.61	OJI-CR 401.25
402.99	OJI-CR 401.27
403.01	OJI-CR 405.01
403.03	OJI-CR 405.03
403.10	OJI-CR 405.05
403.50	OJI-CR 405.07
403.55	OJI-CR 405.09
405.01	OJI-CR 409.01
405.10	OJI-CR 409.03
405.20	OJI-CR 409.05
405.21	OJI-CR 409.07
405.22	OJI-CR 409.11
405.25	OJI-CR 409.13
405.40	OJI-CR 409.15
405.41	OJI-CR 409.17
405.50	OJI-CR 409.19
405.51	OJI-CR 409.21
405.52	OJI-CR 409.23
405.60	OJI-CR 409.25
405.63	OJI-CR 409.27
405.64	OJI-CR 409.29
405.65	OJI-CR 409.31
405.91	OJI-CR 409.33
407.01	OJI-CR 413.01
407.03	OJI-CR 413.03
407.05	OJI-CR 413.05

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
407.10	OJI-CR 413.07
409.01	OJI-CR 417.01
409.02	OJI-CR 417.03
409.03	OJI-CR 417.05
409.05	OJI-CR 417.07
409.07	OJI-CR 417.09
409.11	OJI-CR 417.11
409.13	OJI-CR 417.13
409.15	OJI-CR 417.15
409.21	OJI-CR 417.17
409.31	OJI-CR 417.19
409.50	OJI-CR 417.21
409.55	OJI-CR 417.23
409.56	OJI-CR 417.25
409.57	OJI-CR 417.27
409.60	OJI-CR 417.29
409.65	OJI-CR 417.31
409.67	OJI-CR 417.33
411.01	OJI-CR 421.01
411.03	OJI-CR 421.03
411.05	OJI-CR 421.05
411.07	OJI-CR 421.07
411.10 (offenses committed before 10/27/00)	OJI-CR 421.09 (offenses committed before 10/27/00)
411.10 (offenses committed on and after 10/27/00)	OJI-CR 421.09 (offenses committed on and after 10/27/00)
411.11 (offenses committed before 10/27/00)	OJI-CR 421.11 (offenses committed before 10/27/00)
411.11 (offenses committed on and after 10/27/00)	OJI-CR 421.11 (offenses committed on and after 10/27/00)
411.19	OJI-CR 421.13
411.20	OJI-CR 421.15
411.25	OJI-CR 421.17
411.31	OJI-CR 421.19
411.33	OJI-CR 421.21
411.35	OJI-CR 421.23
411.51	OJI-CR 421.25
411.53	OJI-CR 421.27
411.55	OJI-CR 421.29
413.01	OJI-CR 425.01
413.05	OJI-CR 425.03
413.10	OJI-CR 425.05
413.11	OJI-CR 425.07
413.21	OJI-CR 425.09



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
413.23	OJI-CR 425.11
413.30	OJI-CR 425.13
413.35	OJI-CR 425.15
413.37	OJI-CR 425.17
413.38	OJI-CR 425.19
413.39	OJI-CR 425.21
413.40	OJI-CR 425.23
413.43	OJI-CR 425.25
413.45	OJI-CR 425.27
413.47	OJI-CR 425.29
413.49	OJI-CR 425.31
413.50	OJI-CR 425.33
413.60	OJI-CR 425.35
413.70	OJI-CR 425.37
413.80	OJI-CR 425.39
413.81	OJI-CR 425.41
413.90	OJI-CR 425.43
415.01	OJI-CR 429.01
415.03	OJI-CR 429.03
415.05	OJI-CR 429.05
415.10	OJI-CR 429.07
415.50	OJI-CR 429.09
415.75	OJI-CR 429.11
415.90	OJI-CR 429.13
503.01	OJI-CR 503.01
503.011	OJI-CR 503.011
503.02 (offenses committed on and after 9/6/96 but before 6/30/98)	OJI-CR 503.02 (offenses committed on and after 9/6/96 but before 6/30/98)
503.02 (offenses committed on and after 6/30/98)	OJI-CR 503.02 (offenses committed on and after 6/30/98)
503.03 (offenses committed on and after 9/6/96)	OJI-CR 503.03 (offenses committed on and after 9/6/96)
503.04 (offenses committed on and after 9/6/96 but before 3/23/00)	OJI-CR 503.04 (offenses committed on and after 9/6/96 but before 3/23/00)
503.04 (offenses committed on and after 3/23/00)	OJI-CR 503.04 (offenses committed on and after 3/23/00)
503.041	OJI-CR 503.041
503.05	OJI-CR 503.05
503.06 (offenses committed before 3/23/00)	OJI-CR 503.06 (offenses committed before 3/23/00)
503.06 (offenses committed on and after 3/23/00)	OJI-CR 503.06 (offenses committed on and after 3/23/00)
503.07 (offenses committed on and after 9/6/96) [section repealed 3/23/00]	OJI-CR 503.07 (offenses committed on and after 9/6/96)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
503.08 (offenses committed on and after 9/6/96 but before 3/23/00)	OJI-CR 503.08 (offenses committed on and after 9/6/96 but before 3/23/00)
503.08 (offenses committed on and after 3/23/00)	OJI-CR 503.08 (offenses committed on and after 3/23/00)
503.11(A) (offenses committed on and after 9/6/96) [Rev. 2-24-07]	OJI-CR 503.11(A) (offenses committed on and after 9/6/96)
503.11(B) (offenses committed on and after 3/23/00) [Rev. 1-20-07]	OJI-CR 503.11(B) (offenses committed on and after 3/23/00)
503.12	OJI-CR 503.12
503.13	OJI-CR 503.13
503.14 (offenses committed on and after 9/6/96)	OJI-CR 503.14 (offenses committed on and after 9/6/96)
503.15 (offenses committed on and after 8/25/99)	OJI-CR 503.15 (offenses committed on and after 8/25/99)
503.16	OJI-CR 503.16
503.21 (offenses committed on and after 9/6/96)	OJI-CR 503.21 (offenses committed on and after 9/6/96)
503.22 (offenses committed on and after 9/6/96)	OJI-CR 503.22 (offenses committed on and after 9/6/96)
503.31	OJI-CR 503.31
503.34	OJI-CR 503.34
503.35	OJI-CR 503.35
503.211 (offenses committed before 3/10/00)	OJI-CR 503.211 (offenses committed before 3/10/00)
503.211 (offenses committed on and after 3/10/00)	OJI-CR 503.211 (offenses committed on and after 3/10/00 but before 1/1/08) OJI-CR 503.211 (offenses committed on and after 1/1/08)
503.214	OJI-CR 503.214
505.01(A) (offenses committed before 7/1/96)	OJI-CR 505.01(A) (offenses committed before 7/1/96)
505.01(A) (offenses committed on and after 7/1/96) [Rev. 1-20-07]	OJI-CR 505.01(A) (offenses committed on and after 7/1/96)
505.01(B) (offenses committed before 7/1/96)	OJI-CR 505.01(B) (offenses committed before 7/1/96)
505.01(B) (offenses committed on and after 7/1/96)	OJI-CR 505.01(B) (offenses committed on and after 7/1/96)
505.02 (offenses committed before 7/1/96)	OJI-CR 505.02 (offenses committed before 7/1/96)
505.02 (offenses committed on and after 7/1/96)	OJI-CR 505.02 (offenses committed on and after 7/1/96)
505.03	OJI-CR 505.03
505.04 (offenses committed before 7/1/96)	OJI-CR 505.04 (offenses committed before 7/1/96)
505.05 (offenses committed before 7/1/96)	OJI-CR 505.05
505.05	OJI-CR 505.05



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505.11 (offenses committed before 7/1/96)	OJI-CR 505.11 (offenses committed before 7/1/96)
505.11 (offenses committed on and after 7/1/96)	OJI-CR 505.11 (offenses committed on and after 7/1/96)
505.12	OJI-CR 505.12
505.22 (offenses committed before 7/1/96)	OJI-CR 505.22 (offenses committed before 7/1/96)
505.22 (offenses committed on and after 7/1/96)	OJI-CR 505.22 (offenses committed on and after 7/1/96)
507.02(A)(1) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(1) (offenses committed before 7/1/96)
507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)
507.02(A)(1) (offenses committed on and after 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 3/10/98)
507.02(A)(2) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed before 7/1/96)
507.02(A)(2) (offenses committed on and after 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed on and after 7/1/96)
507.03 (offenses committed before 7/1/96)	OJI-CR 507.03 (offenses committed before 7/1/96)
507.03 (offenses committed on and after 7/1/96)	OJI-CR 507.03 (offenses committed on and after 7/1/96)
507.04 (offenses committed before 7/1/96)	OJI-CR 507.04 (offenses committed before 7/1/96)
507.04 (offenses committed on and after 7/1/96)	OJI-CR 507.04 (offenses committed on and after 7/1/96)
507.05 (offenses committed before 7/1/96)	OJI-CR 507.05 (offenses committed before 7/1/96)
507.05 (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.05 (offenses committed on and after 7/1/96 but before 3/10/98)
507.05 (offenses committed on and after 3/10/98)	OJI-CR 507.05 (offenses committed on and after 3/10/98)
507.06 (offenses committed before 7/1/96)	OJI-CR 507.06 (offenses committed before 7/1/96)
507.06 (offenses committed on and after 7/1/96)	OJI-CR 507.06 (offenses committed on and after 7/1/96)
507.07 (offenses committed before 3/22/01)	OJI-CR 507.07 (offenses committed before 3/22/01)
507.07 (offenses committed on and after 3/22/01 but before 5/7/02)	OJI-CR 507.07 (offenses committed on and after 3/22/01 but before 5/7/02)
507.07 (offenses committed on and after 5/7/02 but before 7/31/03)	OJI-CR 507.07 (offenses committed on and after 5/7/02 but before 7/31/03)
507.07 (offenses committed on and after 7/31/03)	OJI-CR 507.07 (offenses committed on and after 7/31/03)

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507.08 (offenses committed before 1/30/98)	OJI-CR 507.08 (offenses committed before 1/30/98)
507.08 (offenses committed on and after 1/30/98)	OJI-CR 507.08 (offenses committed on and after 1/30/98)
507.09 (offenses committed before 9/26/05)	OJI-CR 507.09 (offenses committed before 9/26/05)
507.09 (offenses committed on and after 9/26/05)	OJI-CR 507.09 (offenses committed on and after 9/26/05)
507.12(A)(1) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(1) (offenses committed before 9/3/96)
507.12(A)(2) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(2) (offenses committed before 9/3/96)
507.21 (offenses committed before 7/1/96)	OJI-CR 507.21 (offenses committed before 7/1/96)
507.21 (offenses committed on and after 7/1/96)	OJI-CR 507.21 (offenses committed on and after 7/1/96)
507.22 (offenses committed before 7/1/96)	OJI-CR 507.22 (offenses committed before 7/1/96)
507.22 (offenses committed on and after 7/1/96)	OJI-CR 507.22 (offenses committed on and after 7/1/96)
507.23	OJI-CR 507.23
507.24	OJI-CR 507.24
507.25 (offenses committed before 7/1/96)	OJI-CR 507.25 (offenses committed before 7/1/96)
507.31 (offenses committed before 7/1/96)	OJI-CR 507.31 (offenses committed before 7/1/96)
507.31 (offenses committed on and after 7/1/96 but before 1/1/04)	OJI-CR 507.31 (offenses committed on and after 7/1/96 but before 1/1/04)
507.31 (offenses committed on and after 1/1/04)	OJI-CR 507.31 (offenses committed on and after 1/1/04)
507.32	OJI-CR 507.32
507.33	OJI-CR 507.33
507.34(A) (offenses committed before 7/1/96)	OJI-CR 507.34(A) (offenses committed before 7/1/96)
507.34(A) (offenses committed on and after 7/1/96)	OJI-CR 507.34(A) (offenses committed on and after 7/1/96)
507.34(B) (offenses committed before 7/1/96)	OJI-CR 507.34(B) (offenses committed before 7/1/96)
507.34(B) (offenses committed on and after 7/1/96)	OJI-CR 507.34(B) (offenses committed on and after 7/1/96)
507.42 (offenses committed before 7/1/96)	OJI-CR 507.42 (offenses committed before 7/1/96)
507.42 (offenses committed on and after 7/1/96)	OJI-CR 507.42 (offenses committed on and after 7/1/96)
507.53(A)	OJI-CR 507.53(A)
507.53(B)	OJI-CR 507.53(B)
507.53(C)	OJI-CR 507.53(C)



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507.71 (offenses committed on and after 1/1/97)	OJI-CR 507.71 (offenses committed on and after 1/1/97)
507.72 (offenses committed on and after 1/1/97)	OJI-CR 507.72 (offenses committed on and after 1/1/97)
507.241 (offenses committed before 7/1/96)	OJI-CR 507.241 (offenses committed before 7/1/96)
507.241 (offenses committed on and after 7/1/96)	OJI-CR 507.241 (offenses committed on and after 7/1/96)
507.311	OJI-CR 507.311
507.321 (offenses committed before 7/1/96)	OJI-CR 507.321 (offenses committed before 7/1/96)
507.321 (offenses committed on and after 7/1/96)	OJI-CR 507.321 (offenses committed on and after 7/1/96)
507.322 (offenses committed before 7/1/96)	OJI-CR 507.322 (offenses committed before 7/1/96)
507.322 (offenses committed on and after 7/1/96)	OJI-CR 507.322 (offenses committed on and after 7/1/96)
507.323 (offenses committed before 7/1/96)	OJI-CR 507.323 (offenses committed before 7/1/96)
507.323 (offenses committed on and after 7/1/96)	OJI-CR 507.323 (offenses committed on and after 7/1/96)
509.02 (offenses committed before 7/1/96)	OJI-CR 509.02 (offenses committed before 7/1/96)
509.02 (offenses committed on and after 7/1/96)	OJI-CR 509.02 (offenses committed on and after 7/1/96)
509.03 (offenses committed before 7/1/96)	OJI-CR 509.03 (offenses committed before 7/1/96)
509.03 (offenses committed on and after 7/1/96)	OJI-CR 509.03 (offenses committed on and after 7/1/96)
509.04 (offenses committed before 7/1/96)	OJI-CR 509.04 (offenses committed before 7/1/96)
509.04 (offenses committed on and after 7/1/96)	OJI-CR 509.04 (offenses committed on and after 7/1/96)
509.05(A) (offenses committed before 7/1/96)	OJI-CR 509.05(A) (offenses committed before 7/1/96)
509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(A) (offenses committed on and after 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 9/30/98)
509.05(B) (offenses committed before 7/1/96)	OJI-CR 509.05(B) (offenses committed before 7/1/96)
509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(B) (offenses committed on and after 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 9/30/98)
509.05(C) (offenses committed before 7/1/96)	OJI-CR 509.05(C) (offenses committed before 7/1/96)

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509.05(C) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(C) (offenses committed on and after 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 9/30/98)
509.05(D) (offenses committed before 7/1/96)	OJI-CR 509.05(D) (offenses committed before 7/1/96)
509.05(D) (offenses committed on and after 7/1/96)	OJI-CR 509.05(D) (offenses committed on and after 7/1/96)
509.06 (offenses committed before 7/1/96)	OJI-CR 509.06 (offenses committed before 7/1/96)
509.06 (offenses committed on and after 7/1/96)	OJI-CR 509.06 (offenses committed on and after 7/1/96)
509.07 (offenses committed before 7/1/96)	OJI-CR 509.07 (offenses committed before 7/1/96)
509.07 (offenses committed on and after 7/1/96)	OJI-CR 509.07 (offenses committed on and after 7/1/96)
509.08 (offenses committed before 7/1/96)	OJI-CR 509.08 (offenses committed before 7/1/96)
509.08 (offenses committed on or after 7/1/96)	OJI-CR 509.08 (offenses committed on or after 7/1/96)
509.22	OJI-CR 509.22
509.23	OJI-CR 509.23
509.24	OJI-CR 509.24
511.01(A)	OJI-CR 511.01(A)
511.01(B)	OJI-CR 511.01(B)
511.02	OJI-CR 511.02
511.11	OJI-CR 511.11
511.12	OJI-CR 511.12
511.13(A)	OJI-CR 511.13(A)
511.13(B)	OJI-CR 511.13(B)
511.21	OJI-CR 511.21
511.23	OJI-CR 511.23
511.31	OJI-CR 511.31
511.32	OJI-CR 511.32
511.211	OJI-CR 511.211
513.02 (offenses committed before 7/1/96)	OJI-CR 513.02 (offenses committed before 7/1/96)
513.02 (offenses committed on and after 7/1/96)	OJI-CR 513.02 (offenses committed on and after 7/1/96)
513.03 (offenses committed before 7/1/96)	OJI-CR 513.03 (offenses committed before 7/1/96)
513.03 (offenses committed on and after 7/1/96)	OJI-CR 513.03 (offenses committed on and after 7/1/96)
513.04 (offenses committed before 7/1/96)	OJI-CR 513.04 (offenses committed before 7/1/96)



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513.04 (offenses committed on and after 7/1/96)	OJI-CR 513.04 (offenses committed on and after 7/1/96)
513.041 (offenses committed on and after 7/1/96)	OJI-CR 513.041 (offenses committed on and after 7/1/96)
513.11 (offenses committed before 7/1/96)	OJI-CR 513.11 (offenses committed before 7/1/96)
513.11 (offenses committed on and after 7/1/96)	OJI-CR 513.11 (offenses committed on and after 7/1/96)
513.21 (offenses committed before 7/1/96)	OJI-CR 513.21 (offenses committed before 7/1/96)
513.21 (offenses committed on and after 7/1/96)	OJI-CR 513.21 (offenses committed on and after 7/1/96)
513.31(A) (offenses committed before 7/1/96)	OJI-CR 513.31(A) (offenses committed before 7/1/96)
513.31(A) (offenses committed on and after 7/1/96)	OJI-CR 513.31(A) (offenses committed on and after 7/1/96)
513.31(B)	OJI-CR 513.31(B)
513.32 (offenses committed before 7/1/96)	OJI-CR 513.32 (offenses committed before 7/1/96)
513.32 (offenses committed on and after 7/1/96)	OJI-CR 513.32 (offenses committed on and after 7/1/96)
513.33 (offenses committed on and after 3/31/97)	OJI-CR 513.33 (offenses committed on and after 3/31/97)
513.34 (offenses committed on and after 3/31/97)	OJI-CR 513.34 (offenses committed on and after 3/31/97)
513.40	OJI-CR 513.40
513.41 (offenses committed before 7/1/96)	OJI-CR 513.41 (offenses committed before 7/1/96)
513.42 (offenses committed before 7/1/96)	OJI-CR 513.42 (offenses committed before 7/1/96)
513.42 (offenses committed on and after 7/1/96)	OJI-CR 513.42 (offenses committed on and after 7/1/96)
513.43 (offenses committed before 7/1/96)	OJI-CR 513.43 (offenses committed before 7/1/96)
513.43 (offenses committed on and after 7/1/96)	OJI-CR 513.43 (offenses committed on and after 7/1/96)
513.44	OJI-CR 513.44
513.45 (offenses committed before 7/1/96)	OJI-CR 513.45 (offenses committed before 7/1/96)
513.45 (offenses committed on and after 7/1/96)	OJI-CR 513.45 (offenses committed on and after 7/1/96)
513.46(A) (offenses committed before 10/29/95)	OJI-CR 513.46(A) (offenses committed before 10/29/95)
513.46(B) (offenses committed before 10/29/95)	OJI-CR 513.46(B) (offenses committed before 10/29/95)
513.46(B) (offenses committed on and after 9/26/96)	OJI-CR 513.46(B) (offenses committed on and after 9/26/96)

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513.46(C) (offenses committed on and after 9/26/96)	OJI-CR 513.46(C) (offenses committed on and after 9/26/96)
513.47 (offenses committed before 7/1/96)	OJI-CR 513.47 (offenses committed before 7/1/96)
513.47 (offenses committed on and after 7/1/96)	OJI-CR 513.47 (offenses committed on and after 7/1/96)
513.48 (offenses committed before 7/1/96)	OJI-CR 513.48 (offenses committed before 7/1/96)
513.48 (offenses committed on and after 7/1/96)	OJI-CR 513.48 (offenses committed on and after 7/1/96)
513.51 (offenses committed before 7/1/96)	OJI-CR 513.51 (offenses committed before 7/1/96)
513.51 (offenses committed on or after 7/1/96)	OJI-CR 513.51 (offenses committed on or after 7/1/96)
513.81 (offenses committed before 7/1/96)	OJI-CR 513.81 (offenses committed before 7/1/96)
513.401	OJI-CR 513.401
515.02	OJI-CR 515.02
515.03	OJI-CR 515.03
515.04	OJI-CR 515.04
515.05	OJI-CR 515.05
515.05(A) (offenses committed before 7/1/96)	OJI-CR 515.05(A) (offenses committed before 7/1/96)
515.05(B) (offenses committed on and after 7/1/96)	OJI-CR 515.05(B) (offenses committed on and after 7/1/96)
515.06 (offenses committed before 7/1/96)	OJI-CR 515.06 (offenses committed before 7/1/96)
515.07	OJI-CR 515.07
515.09	OJI-CR 515.09
515.10(A)	OJI-CR 515.10(A)
515.10(C)	OJI-CR 515.10(C)
515.11	OJI-CR 515.11
515.12 (offenses committed before 7/1/96)	OJI-CR 515.12 (offenses committed before 7/1/96)
517.01	OJI-CR 517.01
517.02(A)	OJI-CR 517.02(A)
517.02(B)	OJI-CR 517.02(B)
517.03	OJI-CR 517.03
517.11(A)	OJI-CR 517.11(A)
517.11(B)	OJI-CR 517.11(B)
517.12	OJI-CR 517.12
517.13	OJI-CR 517.13
517.21(A)	OJI-CR 517.21(A)
517.21(B)	OJI-CR 517.21(B)
517.31	OJI-CR 517.31
517.32	OJI-CR 517.32



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517.40	OJI-CR 517.40
517.41	OJI-CR 517.41
517.47	OJI-CR 517.47
519.01	OJI-CR 519.01
519.12(A)	OJI-CR 519.12(A)
519.12(B)	OJI-CR 519.12(B)
519.13(A)	OJI-CR 519.13(A)
519.13(B)	OJI-CR 519.13(B)
519.14	OJI-CR 519.14
519.21(A)	OJI-CR 519.21(A)
519.21(B)	OJI-CR 519.21(B)
519.22	OJI-CR 519.22
519.23(A)	OJI-CR 519.23(A)
519.23(B)	OJI-CR 519.23(B)
519.24	OJI-CR 519.24
519.24(A)(3) (offenses committed on and after 1/1/02)	OJI-CR 519.24(A)(3) (offenses committed on and after 1/1/02)
519.25	OJI-CR 519.25
519.27	OJI-CR 519.27
519.231	OJI-CR 519.231
521.02	OJI-CR 521.02
521.03 (offenses committed before 9/3/96)	OJI-CR 521.03 (offenses committed before 9/3/96)
521.03 (offenses committed on and after 9/3/96 and before 11/6/96)	OJI-CR 521.03 (offenses committed on and after 9/3/96 and before 11/6/96)
521.03 (offenses committed on and after 11/6/96)	OJI-CR 521.03 (offenses committed on and after 11/6/96)
521.04 (offenses committed before 9/3/96)	OJI-CR 521.04 (offenses committed before 9/3/96)
521.04 (offenses committed on and after 9/3/96)	OJI-CR 521.04 (offenses committed on and after 9/3/96)
521.05	OJI-CR 521.05
521.11	OJI-CR 521.11
521.12	OJI-CR 521.12
521.13 (offenses committed before 7/1/96)	OJI-CR 521.13 (offenses committed before 7/1/96)
521.13 (offenses committed on and after 7/1/96 and before 10/1/97)	OJI-CR 521.13 (offenses committed on and after 7/1/96 and before 10/1/97)
521.13 (offenses committed on and after 10/1/97)	OJI-CR 521.13 (offenses committed on and after 10/1/97)
521.14	OJI-CR 521.14
521.21	OJI-CR 521.21
521.22(A)	OJI-CR 521.22(A)
521.22(B)	OJI-CR 521.22(B)
521.22(C)	OJI-CR 521.22(C)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
521.22(D) (offenses committed before 3/18/97)	OJI-CR 521.22(D) (offenses committed before 3/18/97)
521.22(D) (offenses committed on and after 3/18/97)	OJI-CR 521.22(D) (offenses committed on and after 3/18/97)
521.22(E)	OJI-CR 521.22(E)
521.24	OJI-CR 521.24
521.31	OJI-CR 521.31
521.32 (offenses committed before 7/1/96)	OJI-CR 521.32 (offenses committed before 7/1/96)
521.32 (offenses committed on and after 7/1/96 and before 12/31/97)	OJI-CR 521.32 (offenses committed on and after 7/1/96 and before 12/31/97)
521.32 (offenses committed on and after 12/31/97)	OJI-CR 521.32 (offenses committed on and after 12/31/97)
521.321	OJI-CR 521.321
521.33 (offenses committed before 7/1/96)	OJI-CR 521.33 (offenses committed before 7/1/96)
521.33 (offenses committed on and after 7/1/96 but before 9/16/97)	OJI-CR 521.33 (offenses committed on and after 7/1/96 but before 9/16/97)
521.33 (offenses committed on and after 9/16/97)	OJI-CR 521.33 (offenses committed on and after 9/16/97)
521.34(A)(1)	OJI-CR 521.34(A)(1)
521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)	OJI-CR 521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)
521.35(A)	OJI-CR 521.35(A)
521.35(B)	OJI-CR 521.35(B)
521.36	OJI-CR 521.36
521.38	OJI-CR 521.38 (offenses committed on and after 6/11/97 but before 4/4/07) OJI-CR 521.38 (offenses committed on and after 4/4/07)
521.41	OJI-CR 521.41
521.42	OJI-CR 521.42
521.43(A)	OJI-CR 521.43(A)
521.43(B)	OJI-CR 521.43(B)
521.43(C)	OJI-CR 521.43(C)
521.44(A)	OJI-CR 521.44(A)
521.44(B)	OJI-CR 521.44(B)
521.44(C)	OJI-CR 521.44(C)
521.44(D)	OJI-CR 521.44(D)
521.44(E)	OJI-CR 521.44(E)
521.45	OJI-CR 521.45
521.51(B)	OJI-CR 521.51(B)
521.51(C)	OJI-CR 521.51(C)
521.51(D)	OJI-CR 521.51(D)
521.51(E)	OJI-CR 521.51(E)



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521.52	OJI-CR 521.52
521.331	OJI-CR 521.331
523.01 (offenses committed before 7/1/96)	OJI-CR 523.01 (offenses committed before 7/1/96)
523.01 (offenses committed on and after 7/1/96)	OJI-CR 523.01 (offenses committed on and after 7/1/96)
523.02 (offenses committed before 7/1/96)	OJI-CR 523.02 (offenses committed before 7/1/96)
523.02 (offenses committed on and after 7/1/96)	OJI-CR 523.02 (offenses committed on and after 7/1/96)
523.03 (offenses committed before 7/1/96)	OJI-CR 523.03 (offenses committed before 7/1/96)
523.03 (offenses committed on and after 7/1/96)	OJI-CR 523.03 (offenses committed on and after 7/1/96)
523.12	OJI-CR 523.12
523.13 (offenses committed before 7/1/96)	OJI-CR 523.13 (offenses committed before 7/1/96)
523.13(A) (offenses committed on and after 7/1/96)	OJI-CR 523.13(A) (offenses committed on and after 7/1/96)
523.13(B) (offenses committed on and after 7/1/96)	OJI-CR 523.13(B) (offenses committed on and after 7/1/96)
523.15	OJI-CR 523.15
523.16	OJI-CR 523.16
523.17 (offenses committed before 7/1/96)	OJI-CR 523.17 (offenses committed before 7/1/96)
523.17 (offenses committed on and after 7/1/96)	OJI-CR 523.17 (offenses committed on and after 7/1/96)
523.19	OJI-CR 523.19
523.20 (offenses committed before 7/1/96)	OJI-CR 523.20 (offenses committed before 7/1/96)
523.20 (offenses committed on and after 7/1/96)	OJI-CR 523.20 (offenses committed on and after 7/1/96)
523.21 (offenses committed before 11/9/95)	OJI-CR 523.21 (offenses committed before 11/9/95)
523.21 (offenses committed on and after 11/9/95 but before 7/1/96)	OJI-CR 523.21 (offenses committed on and after 11/9/95 but before 7/1/96)
523.21 (offenses committed on and after 7/1/96)	OJI-CR 523.21 (offenses committed on and after 7/1/96)
523.211(B)	OJI-CR 523.211(B)
523.24 (offenses committed before 7/1/96)	OJI-CR 523.24 (offenses committed before 7/1/96)
523.24 (offenses committed on and after 7/1/96)	OJI-CR 523.24 (offenses committed on and after 7/1/96)
523.32(A)(1)	OJI-CR 523.32(A)(1)
523.32(A)(2)	OJI-CR 523.32(A)(2)
523.32(A)(3)	OJI-CR 523.32(A)(3)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
523.42 (offenses committed on and after 1/1/99)	OJI-CR 523.42 (offenses committed on and after 1/1/99)
523.44	OJI-CR 523.44
523.121 (offenses committed before 7/1/96)	OJI-CR 523.121 (offenses committed before 7/1/96)
523.121 (offenses committed on and after 7/1/96)	OJI-CR 523.121 (offenses committed on and after 7/1/96)
523.122 (offenses committed before 7/1/96)	OJI-CR 523.122 (offenses committed before 7/1/96)
523.122 (offenses committed on and after 7/1/96 but before 3/18/97)	OJI-CR 523.122 (offenses committed on and after 7/1/96 but before 3/18/97)
523.122 (offenses committed on and after 3/18/97 but before 8/6/99)	OJI-CR 523.122 (offenses committed on and after 3/18/97 but before 8/6/99)
523.122 (offenses committed on and after 8/6/99)	OJI-CR 523.122 (offenses committed on and after 8/6/99)
523.123(A)	OJI-CR 523.123(A)
523.123(B)	OJI-CR 523.123(B)
523.131	OJI-CR 523.131
523.161 (offenses committed before 7/1/96)	OJI-CR 523.161 (offenses committed before 7/1/96)
523.161 (offenses committed on and after 7/1/96 but before 8/6/99)	OJI-CR 523.161 (offenses committed on and after 7/1/96 but before 8/6/99)
523.161 (offenses committed on and after 8/6/99)	OJI-CR 523.161 (offenses committed on and after 8/6/99)
525.02 (offenses committed before 7/1/96)	OJI-CR 525.02 (offenses committed before 7/1/96)
525.02 (offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/1/96 but before 7/22/98)
525.02 (offenses committed on and after 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/22/98)
525.03 (offenses committed before 7/1/96)	OJI-CR 525.03 (offenses committed before 7/1/96)
525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)
525.03 (offenses committed on and after 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 2/13/2001)
525.04(offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.041	OJI-CR 525.041
525.05 (offenses committed before 3/23/2000)	OJI-CR 525.05 (offenses committed before 3/23/2000)
525.05 (offenses committed on and after 3/23/2000)	OJI-CR 525.05 (offenses committed on and after 3/23/2000)
525.06	OJI-CR 525.06
525.07	OJI-CR 525.07



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
525.09(A) (offenses committed before 7/22/98)	OJI-CR 525.09(A) (offenses committed before 7/22/98)
525.09(A) (offenses committed on and after 7/22/98)	OJI-CR 525.09(A) (offenses committed on and after 7/22/98)
525.09(B)	OJI-CR 525.09(B)
525.11 (offenses committed before 7/1/96)	OJI-CR 525.11(offenses committed before 7/1/96)
525.11 (offenses committed on and after 7/1/96 but before 6/20/97)	OJI-CR 525.11 (offenses committed on and after 7/1/96 but before 6/20/97)
525.11 (offenses committed on and after 6/20/97)	OJI-CR 525.11 (offenses committed on and after 6/20/97)
525.12 (offenses committed before 7/1/96)	OJI-CR 525.12 (offenses committed before 7/1/96)
525.12 (offenses committed on and after 7/1/96)	OJI-CR 525.12 (offenses committed on and after 7/1/96)
525.13 (offenses committed before 7/1/96)	OJI-CR 525.13 (offenses committed before 7/1/96)
525.13 (offenses committed on and after 7/1/96)	OJI-CR 525.13 (offenses committed on and after 7/1/96)
525.14(C) (offenses committed before 7/1/96)	OJI-CR 525.14(C) (offenses committed before 7/1/96)
525.14(C) (offenses committed on and after 7/1/96)	OJI-CR 525.14(C) (offenses committed on and after 7/1/96)
525.22(offenses committed before 7/1/96)	OJI-CR 525.22 (offenses committed before 7/1/96)
525.22(offenses committed on and after 7/1/96)	OJI-CR 525.22(offenses committed on and after 7/1/96)
525.23 (offenses committed before 7/1/96)	OJI-CR 525.23 (offenses committed before 7/1/96)
525.23(offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/1/96 but before 7/22/98)
525.23(offenses committed on and after 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/22/98)
525.24	OJI-CR 525.24
525.31(offenses committed before 7/1/96)	OJI-CR 525.31(offenses committed before 7/1/96)
525.31(offenses committed on and after 7/1/96)	OJI-CR 525.31(offenses committed on and after 7/1/96)
525.32 (offenses committed before 7/1/96)	OJI-CR 525.32 (offenses committed before 7/1/96)
525.32(offenses committed on and after 7/1/96 but before 1/1/97)	OJI-CR 525.32(offenses committed on and after 7/1/96 but before 1/1/97)
525.32(offenses committed on and after 1/1/97)	OJI-CR 525.32(offenses committed on and after 1/1/97)
525.33	OJI-CR 525.33
525.36 (offenses committed before 7/1/96)	OJI-CR 525.36 (offenses committed before 7/1/96)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
525.36 (offenses committed on and after 7/1/96)	OJI-CR 525.36 (offenses committed on and after 7/1/96)
525.37(offenses committed before 7/1/96)	OJI-CR 525.37(offenses committed before 7/1/96)
525.37 (offenses committed on and after 7/1/96)	OJI-CR 525.37 (offenses committed on and after 7/1/96)
525.42	OJI-CR 525.42
527.01	OJI-CR 527.01
527.02(B)(1)	OJI-CR 527.02(B)(1)
527.02(B)(2)	OJI-CR 527.02(B)(2)
527.02(B)(3) (offenses committed on and after 3/15/01)	OJI-CR 527.02(B)(3) (offenses committed on and after 3/15/01)
527.02(C)	OJI-CR 527.02(C)
527.03	OJI-CR 527.03
527.11	OJI-CR 527.11
527.12	OJI-CR 527.12
527.13	OJI-CR 527.13
527.21	OJI-CR 527.21
527.24(B)	OJI-CR 527.24(B)
527.24(C)	OJI-CR 527.24(C)
527.27(A) (offenses committed on and after 10/09/01)	OJI-CR 527.27(A) (offenses committed on and after 10/09/01)
527.27(B) (offenses committed on and after 10/09/01)	OJI-CR 527.27(B) (offenses committed on and after 10/09/01)
533.92	OJI-CR 533.92
547.11(A)(1)(offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(1)(offenses committed on and after 1/1/04)
547.11(A)(2)-(6) (offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(2)-(6) (offenses committed on and after 1/1/04)
547.11(B)(offenses committed on and after 1/1/04)	OJI-CR 547.11(B)(offenses committed on and after 1/1/04)
549.01(offenses committed on and after 1/1/04)	OJI-CR 709.01(offenses committed on and after 1/1/04)
549.02	OJI-CR 749.02
549.021	OJI-CR 749.021
549.03	OJI-CR 749.03
549.62(A)	OJI-CR 749.62(A)
549.62(B)	OJI-CR 749.62(B)
549.62(C)	OJI-CR 749.62(C)
549.62(D)	OJI-CR 749.62(D)
550.02 (offenses committed before 7/1/97)	OJI-CR 550.02 (offenses committed before 7/1/97)
550.04 (offenses committed on and after 7/1/97 but before 7/13/030)	OJI-CR 550.04 (offenses committed on and after 7/1/97 but before 7/13/030)
550.04 (offenses committed on and after 7/31/03)	OJI-CR 550.04 (offenses committed on and after 7/31/03)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
550.041 (offenses committed on and after 7/31/04)	OJI-CR 550.041 (offenses committed on and after 7/31/04)
550.05 (offenses committed before 7/1/97)	OJI-CR 550.05 (offenses committed before 7/1/97)
550.05 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.05 (offenses committed on and after 7/1/97 but before 7/31/03)
550.05 (offenses committed on and after 7/31/03 but before 4/29/05)	OJI-CR 550.05 (offenses committed on and after 7/31/03 but before 4/29/05)
550.05 (offenses committed on and after 4/29/05)	OJI-CR 550.05 (offenses committed on and after 4/29/05)
550.06 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/1/97 but before 7/31/03)
550.06 (offenses committed on and after 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/31/03)
551.01	OJI-CR 551.01
551.03	OJI-CR 551.03
551.05	OJI-CR 551.05
551.07	OJI-CR 551.07
551.09	OJI-CR 551.09
551.11	OJI-CR 551.11
555.03	OJI-CR 559.03
710.11(A)(offenses committed before 1/1/04)	OJI-CR 710.11(A)(offenses committed before 1/1/04)
710.11(A) (offenses committed on and after 1/1/04)	OJI-CR 710.11(A) (offenses committed on and after 1/1/04)
710.11(B)(offenses committed before 1/1/04)	OJI-CR 710.11(B)(offenses committed before 1/1/04)
710.11(B) (offenses committed on and after 1/1/04)	OJI-CR 710.11(B) (offenses committed on and after 1/1/04)
710.12(A)(1)(a)(offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(a)(offenses committed before 1/1/04)
710.12(A)(1)(a) (offenses committed on and after 6/1/04)	OJI-CR 710.12(A)(1)(a) (offenses committed on and after 6/1/04)
710.12(A)(1)(b) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed before 1/1/04)
710.12(A)(1)(b) (offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed on and after 1/1/04)
710.12(A)(2) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(2) (offenses committed before 1/1/04)
710.12(A)(2)(offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(2)(offenses committed on and after 1/1/04)
710.16(offenses committed before 1/1/04)	OJI-CR 710.16(offenses committed before 1/1/04)
710.16 (offenses committed before 1/1/04)	OJI-CR 710.16 (offenses committed before 1/1/04)
710.21 (offenses committed before 1/1/04)	OJI-CR 710.21 (offenses committed before 1/1/04)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
710.21(offenses committed on and after 1/1/04)	OJI-CR 710.21(offenses committed on and after 1/1/04)
711.19 (offenses committed before 1/1/04)	OJI-CR 711.19 (offenses committed before 1/1/04)
711.19 (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19 (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(offenses committed on and after 6/1/04)	OJI-CR 711.19(offenses committed on and after 6/1/04)
711.19(A) (offenses committed before 6/30/03)	OJI-CR 711.19(A) (offenses committed before 6/30/03)
711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)
711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)
711.19(A)(offenses committed on and after 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/1/04)
711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)	711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)
711.19(A)(2) (offenses committed on and after 9/23/04)	OJI-CR 711.19(A)(2) (offenses committed on and after 9/23/04)
711.19(B) (offenses committed before 6/30/03)	OJI-CR 711.19(B) (offenses committed before 6/30/03)
711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)
711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(B)(offenses committed on and after 6/1/04)	OJI-CR 711.19(B)(offenses committed on and after 6/1/04)
711.194	OJI-CR 711.194
711.203 (offenses committed before 1/1/04)	OJI-CR 711.203 (offenses committed before 1/1/04)
711.203 (offenses committed on and after 1/1/04)	OJI-CR 711.203 (offenses committed on and after 1/1/04)





# Chapter CR 417

## DEFINITIONS

- CR 417.01 Purposely, motive (offenses committed before 3/23/15) [Rev. 1/10/15]
- CR 417.01 Purposely, motive R.C. 2901.22(A) (offenses committed on and after 3/23/15) [Rev. 1/10/15]
- CR 417.03 Fraudulent purpose
- CR 417.05 Mistake of fact
- CR 417.07 Coma, blackout
- CR 417.09 Transfer of purpose
- CR 417.11 Knowingly (offenses committed before 3/23/15)
- CR 417.11 Knowingly R.C. 2901.22(B) (offenses committed on and after 3/23/15) [Rev. 1/10/15]
- CR 417.13 Deprive
- CR 417.15 Owner
- CR 417.17 Criminal recklessness (offenses committed before 3/23/15)
- CR 417.17 Criminal recklessness R.C. 2901.22(C) (offenses committed on and after 3/23/15) [Rev. 8/9/17]
- CR 417.19 Criminal negligence R.C. 2901.22(D) (offenses committed before 3/23/15)
- CR 417.19 Criminal negligence R.C. 2901.22(D) (offenses committed on and after 3/23/15) [Rev. 1/10/15]
- CR 417.21 Possession
- CR 417.23 Cause; natural consequences [Rev. 10/9/21]
- CR 417.25 Other causes, intervening causes [Rev. 11/7/20]
- CR 417.27 Affirmative defense R.C. 2901.05(C) [Rev. 9/12/20]
- CR 417.29 Preponderance of the evidence
- CR 417.31 Prima facie evidence
- CR 417.33 Evidential presumption
- CR 417.35 Threat [Rev. 10-23-10]
- CR 417.37 Reasonable cause to believe [Rev. 10/10/20]
- CR 417.39 Sexual terms defined [Rev. 12/9/17]
- CR 417.41 Firearm [Rev. 11/17/18]
- CR 417.43 Battered Person Syndrome [Rev. 4/13/19]
- CR 417.01 Purposely, motive R.C. 2901.22(A) (offenses committed before 3/23/15) [Rev. 1/10/15]

1. Purpose to (*specify specific conduct*) is an essential element of the crime of (*specify*



*the offense*).

2. **RESULT.** A person acts purposely when it is his/her specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to (*describe result*).

**COMMENT**

Drawn from R.C. 2901.22(A).

3. **CONDUCT.** When the (central idea) (essence) (gist) of the offense is a (prohibition against) (forbidding of) conduct of a certain nature, a person acts purposely if his/her specific intention was to engage in conduct of that nature, regardless of what he/she may have intended to accomplish by his/her conduct.

**COMMENT**

Drawn from R.C. 2901.22(A).

Section 3 will be given in rare cases where conduct is prohibited, e.g., Corruption of a minor, R.C. 2907.04. *See State v. Wilson*, 74 Ohio St.3d 381, 1996-Ohio-103.

4. **ADDITIONAL.** Purpose is a decision of the mind to do an act with a conscious objective of (producing a specific result) (engaging in specific conduct). To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act is known only to himself/herself, unless he/she expresses it to others or indicates it by his/her conduct.

**COMMENT**

*White v. Maxwell*, 174 Ohio St. 186 (1963).

5. **HOW DETERMINED.** The purpose with which a person (does an act) (brings about a result) is determined from the manner in which it is done, the (means) (weapon) used, and all the other facts and circumstances in evidence.

**COMMENT**

*State v. Huffman*, 131 Ohio St. 27 (1936).

6. **INFERENCE - USE OF DEADLY WEAPON.** You may infer a purpose to cause the death of another where the natural or probable consequences of the defendant's act is to produce death in light of all the surrounding circumstances. Such circumstances

include the weapon used and its capability to destroy life. If you find that the defendant used a deadly weapon against another in a manner calculated to destroy life, the purpose to cause death may be, but is not required to be, inferred from the use of the weapon. Whether an inference is made rests entirely with you.

#### COMMENT

Drawn from *State v. Stallings*, 89 Ohio St.3d 280, 2000-Ohio-164; *In re A.J.S.*, 173 Ohio App.3d 171, 2007-Ohio-3216 (plurality opinion); *State v. Sevilla*, 10th Dist. No. 06AP-954, 2007-Ohio-2789.

For the definition of “deadly weapon” and an explanation of the capability of a deadly weapon, see OJI-CR 413.03.

7. **MOTIVE (ADDITIONAL).** Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon (purpose) (knowledge). (Where an act is a crime, a “good” motive or purpose is not a defense.)

#### COMMENT

Motive is the subjective inducement or reason that prompted the purpose. This instruction is unnecessary except when motive is argued to the jury. *See State v. Allen*, 8th Dist. No. 85530, 2005-Ohio-4813; *State v. Parsons*, 6th Dist. Huron No. H-93-47 (Jan. 27, 1995).

8. **TRANSFERRED INTENT (ADDITIONAL).** If you find that the defendant (intended) (was attempting) to cause (*the death of*) (*injury to*) a particular person and that his/her act (unintentionally) (accidentally) caused (the death of) ([*describe other injury*] to) (*insert name of other person killed or injured*), then the defendant is as responsible as if his/her act had harmed the intended person.

#### COMMENT

*State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577; *State v. Sowell*, 39 Ohio St.3d 322 (1988); *State v. Solomon*, 66 Ohio St.2d 214 (1981); *State v. Majid*, 8 Dist. No. 96855, 2012-Ohio-1192.

**CR 417.01 Purposely, motive R.C. 2901.22(A) (offenses committed on and after 3/23/15) [Rev. 1/10/15]**

1. Purpose to (*specify specific conduct*) is an essential element of the crime of (*insert name of offense*).

2. **RESULT.** A person acts purposely when it is the person’s specific intention to (cause a certain result) (engage in conduct of a certain nature). It must be established



in this case that at the time in question there was present in the mind of the defendant a specific intention to *(describe the result the defendant intended to cause or the nature of the conduct in which the defendant intended to engage)*.

**COMMENT**

Drawn from R.C. 2901.22(A).

3. CONDUCT. When the (central idea) (essence) (gist) of the offense is a prohibition against conduct of a certain nature, a person acts purposely, regardless of what the person intended to accomplish thereby, if it was the person's specific intent to engage in conduct of that nature.

**COMMENT**

Drawn from R.C. 2901.22(A).

Section 3 will be given in rare cases where conduct is prohibited, e.g., Corruption of a minor, R.C. 2907.04. *See State v. Wilson*, 74 Ohio St.3d 381, 1996-Ohio-103.

4. INTENT (ADDITIONAL). Purpose is a decision of the mind to do an act with a conscious intent to (produce a specific result) (engage in specific conduct). To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act is known only to that person unless he/she expresses it to others or indicates it by his/her conduct.

**COMMENT**

*White v. Maxwell*, 174 Ohio St. 186 (1963).

5. HOW DETERMINED. The purpose with which a person (does an act) (brings about a result) is determined from the manner in which it is done, the (means) (weapon) used, and all the other facts and circumstances in evidence.

**COMMENT**

*State v. Huffman*, 131 Ohio St. 27 (1936).

6. INFERENCE—USE OF DEADLY WEAPON (ADDITIONAL). You may infer a purpose to cause the death of another when the natural or probable consequence of the defendant's act is to produce death in light of all the surrounding circumstances. Such circumstances include the weapon used and its capability to destroy life. If you find that the defendant used a deadly weapon against another in a manner calculated to destroy

life, you may, but are not required to, infer the purpose to cause death from the use of the weapon. Whether an inference is made rests entirely with you.

#### COMMENT

Drawn from *State v. Stallings*, 89 Ohio St.3d 280, 2000-Ohio-164; *In re A.J.S.*, 173 Ohio App.3d 171, 2007-Ohio-3216 (plurality opinion); *State v. Sevilla*, 10th Dist. Franklin No. 06AP-954, 2007-Ohio-2789.

For the definition of “deadly weapon” and an explanation of the capability of a deadly weapon, see OJI-CR 413.03.

7. **MOTIVE (ADDITIONAL).** Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon (purpose) (knowledge). (When an act is a crime, a “good” motive or purpose is not a defense.)

#### COMMENT

Motive is the subjective inducement or reason that prompted the purpose. This instruction is unnecessary except when motive is argued to the jury. See *State v. Allen*, 8th Dist. Cuyahoga No. 85530, 2005-Ohio-4813; *State v. Parsons*, 6th Dist. Huron No. H-93-47 (Jan. 27, 1995).

8. **TRANSFERRED INTENT (ADDITIONAL).** If you find that the defendant (intended) (was attempting) to cause the death of or injury to (*insert name of intended victim*) and that his/her act (unintentionally) (accidentally) caused the death of or injury to (*insert name of actual victim*), then the defendant is as responsible as if his/her act had harmed (*insert name of intended victim*).

#### COMMENT

*State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577; *State v. Sowell*, 39 Ohio St.3d 322 (1988); *State v. Solomon*, 66 Ohio St.2d 214 (1981); *State v. Majid*, 8 Dist. Cuyahoga No. 96855, 2012-Ohio-1192.

### CR 417.03 Fraudulent purpose R.C. 2913.01(A) and (B)

1. The existence of a purpose to defraud is an essential element of the crime of \_\_\_\_\_.
2. (Defraud) (Fraud) means to knowingly obtain, by deception, some benefit for oneself or for another, or to knowingly cause, by deception, some detriment to another. R.C. 2913.01(B).
3. **DECEPTION.** Deception means knowingly deceiving another or causing another to be deceived, by any false or misleading representation, by withholding information,



by preventing another from acquiring information, or by any other conduct, act, or omission which creates, confirms, or perpetuates a false impression in another, including a false impression as to (law) (value) (state of mind) or other objective or subjective fact. R.C. 2913.01(A).

4. DEFRAUD-OPTIONAL. A purpose to defraud or deceive may be shown by some (statement) (representation) (pretense) (deception) (scheme) (trickery) (other act), known to be false, and carried out to (mislead) (deceive) (cheat) (damage) another.

5. PARTICULAR PERSON. It is not necessary that the defendant intend to defraud a particular (person) (corporation).

6. KNOWINGLY. OJI-CR 417.11.

#### **CR 417.05 Mistake of fact**

1. Unless the defendant had the required (purpose) (knowledge) he is not guilty of the crime of \_\_\_\_\_.

2. In determining whether the defendant had the required (purpose) (knowledge) you will consider whether he acted under a mistake of fact regarding \_\_\_\_\_.

3. If the defendant had an honest belief arrived at in good faith in the existence of such facts and acted in accordance with the facts as he believed them to be, he is not guilty of \_\_\_\_\_ as (a purpose to) (knowledge of) \_\_\_\_\_ is an essential element of that offense.

4. LESSER OFFENSE. However, even if you find that the defendant did not have the required (purpose) (knowledge), you must thereafter consider whether the defendant is guilty of the crime of \_\_\_\_\_ as (purpose) (knowledge) is not an element of that offense.

#### **CR 417.07 Coma, blackout R.C. 2901.21(C)(2)**

1. DEFINED. Where a person commits an act while unconscious as in a (coma) (blackout) (convulsion) due to (heart failure) (disease) (sleep) (injury), such act is not a criminal offense even though it would be a crime if such act were the product of a person's (will) (volition).

2. CONCLUSION. If you have a reasonable doubt whether the defendant was conscious at the time of such act, you must find that he is not guilty. If you find that the defendant was conscious, such finding does not relieve the state of its burden of establishing by the required weight of the testimony (all elements of the crime charged) (any lesser included offense) [that the act was (purposely) (knowingly) committed].

#### **COMMENT**

Use above with appropriate instruction on purpose or knowledge. This instruction would not apply to one who recklessly or negligently became intoxicated or drove a car while sleepy.

3. **STATUTE.** Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's (will) (volition), are involuntary acts. R.C. 2901.21(C)(2).

**CR 417.09 Transfer of purpose**

1. **PURPOSE TO CAUSE THE DEATH.** If you find that the defendant did have a purpose to cause the death of a particular person and that the shot accidentally caused the death of another person, then the defendant would be just as guilty as if the shot had taken effect upon the person intended.
2. **TRANSFERRED.** The purpose required is to cause the death of another, not any specific person. If the shot missed the person intended, but caused the death of another, the element of purpose remains and the offense is as complete as though the person for whom the shot was intended had died.
3. **NO PURPOSE.** However, if there was no purpose to cause the death of anyone, the defendant cannot be found guilty of . . .

**COMMENT**

In some cases an instruction on causation and foreseeability may be appropriate. OJI-CR 417.23, OJI-CR 417.25.

While no instructions are provided where the degree of culpability is one of knowledge, somewhat similar instructions may be required in rare cases for lesser offenses. R.C. 2903.11, 2903.12, 2903.13.

**CR 417.11 Knowingly R.C. 2901.22(B) (offenses committed before 3/23/15)**  
**[Rev. 1/10/15]**

1. **KNOWINGLY.** A person acts knowingly, regardless of his purpose, when (he is aware that his conduct will probably cause a certain result) (he is aware that his conduct will probably be of a certain nature). A person has knowledge of circumstances when he is aware that such circumstances probably exist. R.C. 2901.22(B).
2. **ALTERNATE.** Knowingly means that a person is aware of the existence of the facts and that his acts will probably (cause a certain result) (be of a certain nature).

**COMMENT**

Evidence of mistake, accident, lack of information or other innocent reason negate the existence of knowledge and do not constitute an affirmative defense.

3. **HOW DETERMINED.** Since you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed at the time in the mind of the defendant an awareness of the probability that \_\_\_\_\_.



**COMMENT**

Purposely includes knowingly. R.C. 2901.22(E).

**4. MOTIVE. OJI-CR 417.01 § 7.****CR 417.11 Knowingly R.C. 2901.22(B) (offenses committed on and after 3/23/15) [Rev. 1/10/15]**

1. **KNOWINGLY DEFINED.** A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably (cause a certain result) (be of a certain nature). A person has knowledge of circumstances when the person is aware that such circumstances probably exist. (When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.)

**COMMENT**

R.C. 2901.22(B).

The Committee believes that the trial court should give the last sentence of this instruction only when knowledge of the existence of a particular fact is an element of the offense.

Evidence of mistake, accident, lack of information, or other innocent reason can negate the existence of knowledge, but do not constitute affirmative defenses. *State v. White*, 6th Dist. Lucas No. L-10-1194, 2013-Ohio-51; *State v. Cooper*, 10th Dist. Franklin No. 09AP-511, 2009-Ohio-6275; *State v. Pecora*, 87 Ohio App.3d 687 (9th Dist. 1993); *State v. Rawson*, 7th Dist. Jefferson No. 05-JE-2, 2006-Ohio-496.

2. **HOW DETERMINED.** Because you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed at the time in the mind of the defendant an awareness of the probability that (*describe the alleged result or nature of the defendant's conduct*).

**COMMENT**

Purposely includes knowingly. R.C. 2901.22(E).

**3. MOTIVE. OJI-CR 417.01 § 7.****CR 417.13 Deprive R.C. 2913.01(C)**

1. Deprive means to:

(C)(1) Withhold property of another permanently, or for such period as to appropriate a substantial portion of its value or use or with purpose to restore it only upon payment of a reward or other consideration;

(C)(2) Dispose of property so as to make it unlikely that the owner will recover it;

(C)(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return therefor, and without reasonable justification or excuse for not giving proper consideration.

**CR 417.15 Owner R.C. 2913.01(D)**

1. **OWNER.** Owner means any person, other than the (defendant) (actor), who is the owner of, or who has possession or control of or any license or interest in property or services even though such ownership, possession, control, license or interest is unlawful. R.C. 2913.01(D).

2. **POSSESSION.** OJI-CR 417.21.

**CR 417.17 Criminal recklessness R.C. 2901.22(C) (offenses committed before 3/23/15) [Rev. 1/10/15]**

1. **RECKLESSLY.** A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely (to cause a certain result) (to be of a certain nature). A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist. R.C. 2901.22(C).

2. **RISK.** Risk means a significant possibility, as contrasted with a remote possibility, that (a certain result may occur) (that certain circumstances may exist). R.C. 2901.01(A)(7).

**COMMENT**

While statutory rules for conduct must be submitted to the jury, a violation is civil negligence and not sufficient to constitute reckless conduct. From the statutory definition, the risk taken (going through a red light) must be known and disregarded, but the consequences (that another car will enter on green) need only be a likely circumstance.

See comments on preliminary drafts of the statute, Symposium, The Mens Rea Provisions of the Proposed Ohio Criminal Code—The Continuing Uncertainty (1972), 33 Ohio St. L.J. 381.

Instructions on recklessness and negligence under the criminal code may be the subject of extensive litigation. Any suggestion by the committee is subject to the usual *caveat*, that your guess can be as good as that of anyone else.

Recklessly includes conduct that is knowingly or purposely performed. R.C. 2901.22(E).



**CR 417.17 Criminal recklessness R.C. 2901.22(C) (offenses committed on and after 3/23/15) [Rev. 8/9/17]**

1. **RECKLESSLY DEFINED.** A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

**COMMENT**

R.C. 2901.22(C).

Recklessly includes conduct that is knowingly or purposely performed. R.C. 2901.22(E).

2. **SUBSTANTIAL RISK.** Substantial risk means a strong possibility, as contrasted with a remote or significant possibility, that (a certain result may occur) (certain circumstances may exist).

**COMMENT**

R.C. 2901.01.

There is no statutory definition of the term "unjustifiable."

**CR 417.19 Criminal negligence R.C. 2901.22(D) (offenses committed before 3/23/15) [Rev. 1/10/15]**

1. **NEGLIGENTLY.** A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or to avoid a risk that his conduct may (cause a certain result) (be of a certain nature). A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or to avoid a risk that such circumstances may exist. R.C. 2901.22(D).

2. **DUE CARE (NEGLIGENCE).** Due care is that amount of care which (a reasonably prudent) (an ordinarily cautious) person is accustomed to use under the same or similar circumstances.

3. **SUBSTANTIAL.** You will observe that the lapse or failure to use due care must be substantial. The lapse must be a material departure from the standard of due care. If you find that the defendant failed to use due care, you must determine if his failure was a substantial (lapse) (departure) from the standard of due care.

**COMMENT**

Further elaboration of the word “substantial” may lead to error.

4. **RISK.** Risk means a significant possibility, as contrasted with a remote possibility, that (a certain result may occur) (or) (that certain circumstances may exist). R.C. 2901.01(A)(7).

**COMMENT**

Negligently includes conduct that is recklessly, knowingly or purposely performed. R.C. 2901.22(E).

5. **PROXIMATE CAUSE OR CAUSATION.** OJI-CR 417.23.
6. **NATURAL CONSEQUENCES, FORESEEABILITY.** OJI-CR 417.25.

**COMMENT**

The definition of criminal negligence is a departure from existing civil and criminal law. It imposes upon the jury a duty to determine what conduct amounts to a substantial departure from other specific statutes as well as what amounts to a substantial lapse from due care. The lack of standards for what may be substantial leaves guilt or innocence to the discretion of the jury.

The issue of substantial lapse is always a jury question.

The creation of a new test for criminal negligence requires caution in the application of civil laws and civil instructions. For example, in a homicide case a violation of a mandatory safety or traffic regulation is not negligence *per se*.

*State v. Tipton* (1978), Portage App. No. 773, unreported, is *contra*.

The word negligence should not be used in a criminal case unless it includes the condition of a substantial lapse. Technically correct comparisons with civil negligence will confuse the jury.

The statutory definition of criminal negligence must be amplified and expanded in each case. The caveat to judges must be repeated here. Instructions on criminal negligence and standards for what is intended by “substantial” will develop in future cases.

The greater amount of due care required for inherently deadly objects or dangerous substances creates a problem in defining a substantial lapse of due care in negligent homicide cases. R.C. 2903.05. This section will apply to many commercial and industrial situations. A similar problem exists where the highest degree of care applies, as in the case of a common carrier of passengers.



**CR 417.19 Criminal negligence R.C. 2901.22(D) (offenses committed on and after 3/23/15) [Rev. 1/10/15]**

1. **NEGLIGENTLY.** A person acts negligently when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may (cause a certain result) (be of a certain nature). A person is negligent with respect to circumstances when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that such circumstances may exist.

**COMMENT**

R.C. 2901.22(D).

2. **DUE CARE (NEGLIGENCE).** Due care is that amount of care that a reasonably careful person would use under the same or similar circumstances.

**COMMENT**

Drawn from OJI-CV 401.01.

3. **SUBSTANTIAL.** The lapse or failure to use due care must be substantial. Substantial is another word for material, which means being of real importance or great consequence.

**COMMENT**

*State v. Brady*, 7th Dist. Mahoning No. 13 MA 88, 2014-Ohio-5721.

4. **RISK.** "Risk" means a significant possibility, as contrasted with a remote possibility, that (a certain result may occur) (certain circumstances may exist).

**COMMENT**

Drawn from R.C. 2901.01.

Negligently includes conduct that is recklessly, knowingly, or purposely performed.  
R.C. 2901.22(E).

**CR 417.21 Possession R.C. 2901.21(C)(1)**

1. Possession of \_\_\_\_\_ is an essential element of the offense \_\_\_\_\_.

2. Possession is a voluntary act if the possessor knowingly procured or received the (*describe thing possessed*), or was aware of his control thereof for a sufficient period of time to have ended his possession. R.C. 2901.21(C)(1).

3. A person has possession when he knows that he has the object on or about his (person) (property) or (places it where it is accessible to his use or direction) and he has the ability to direct or control its use.
4. **JOINT POSSESSION.** Two or more persons may have possession if together they have the ability to control it, exclusive of others.
5. **OWNERSHIP.** Ownership is not necessary. A person may possess or control property belonging to another.
6. **R.C. CHAPTER 2925 CASES (DRUGS).** "Possess" or "possession" means having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found. R.C. 2925.01(L).

**CR 417.23 Cause; natural consequences [Rev. 10/9/21]**

1. **CAUSE.** The state charges that the act or failure to act of the defendant caused (death) (physical harm to [person] [property]). Cause is an essential element of the offense. Cause is an act or failure to act which in a natural and continuous sequence directly produces the (death) (physical harm to [person] [property]), and without which it would not have occurred.

**COMMENT**

"[I]t is well established that Ohio law generally defines 'cause' in criminal cases identically to the definition of 'proximate cause' in civil cases." *State v. Carpenter*, 3d Dist. Seneca No. 13-18-16, 2019-Ohio-58.

2. **NATURAL CONSEQUENCES.** The defendant's responsibility is not limited to the immediate or most obvious result of the defendant's act or failure to act. The defendant is also responsible for the natural and foreseeable (consequences) (results) that follow, in the ordinary course of events, from the act or failure to act.

**COMMENT**

Drawn from *State v. Price*, 162 Ohio St.3d 609, 2020-Ohio-4926.

**CR 417.25 Other causes, intervening causes [Rev. 11/7/20]**

1. **OTHER CAUSES NOT A DEFENSE.** There may be one or more causes of an event. However, if a defendant's act or failure to act was one cause, then the existence of other causes is not a defense.
2. **INTERVENING CAUSES.** The defendant is responsible for the natural consequences of the defendant's unlawful act or failure to act, even though (death) (physical harm to [person] [property]) was also caused by the intervening act or failure to act of another (person) (agency).



3. INDEPENDENT INTERVENING CAUSE OF DEATH (ADDITIONAL). If the defendant inflicted an injury not likely to produce death, and if the sole and only cause of death was (natural cause) (fatal injury inflicted by another person), the defendant who inflicted the original injury is not responsible for the death.

**COMMENT**

*State v. Price*, 162 Ohio St.3d 609, 2020-Ohio-4926.

Section 3 of this instruction is applicable only in a homicide case. The defendant may still be responsible for a lesser offense, such as attempted aggravated murder, attempted murder, or assault.

**CR 417.27 Affirmative defense R.C. 2901.05(C) [Rev. 9/12/20]**

**COMMENT**

Effective 3/28/19, R.C. 2901.05 shifted the burden of proof from a defendant having to prove self-defense, defense of another, or defense of a residence by a preponderance of the evidence to the state having to disprove at least one of the elements of self-defense, defense of another, or defense of a residence beyond a reasonable doubt. Under the amended statute, the defendant retains the burden of production, which is the burden of producing evidence “that tends to support” that the defendant used the force in self-defense, defense of another, or defense of a residence. *State v. Carney*, 10th Dist. Franklin No. 19AP-402, 2020-Ohio-2691; *State v. Petway*, 11th Dist. Lake No. 2019-L-124, 2020-Ohio-3848.

Because the General Assembly did not express a clear intent whether R.C. 2901.05 applies to offenses that were committed before and tried after 3/28/19, the court must decide as a threshold matter whether the amended R.C. 2901.05 applies as of the date of the trial or the date of the offense. To date, the Ohio appellate courts are not in agreement.

In *State v. Lewis*, 12th Dist. Butler No. CA2019-07-128, 2020-Ohio-3762, citing *State v. Humphries*, 51 Ohio St.2d 95 (1977), paragraph four of the syllabus and *State v. Gloff*, 12th Dist. Clermont No. CA2019-06-047, 2020-Ohio-3143, the 12th District Court of Appeals determined the burden-shifting change made through the amendment to R.C. 2901.05 applies to every criminal trial held on and after 3/28/19, regardless of when the offense(s) may have occurred. In *State v. Brooks*, 5th Dist. Richland No. 2019 CA 0104, 2020-Ohio-4123, however, the 5th District Court of Appeals decided that the amended statute applies according to the date of the offense, not the date of trial. See also *State v. Williams*, 3d Dist. Allen No. 1-19-39, 2019-Ohio-5381; *State v. Brown*, 9th Dist. Wayne No. 19AP0004, 2020-Ohio-529.

1. CLAIM. The defendant claims that (*describe affirmative defense*).

**COMMENT**

See Chapter 411 dealing with defenses, some of which are affirmative defenses. R.C. 2901.05(A) places the burden of going forward with the evidence of an affirmative defense and the burden of proof by a preponderance of the evidence upon the accused. R.C. 2901.05(D) defines two types of affirmative defenses:

1. A defense expressly designated as affirmative (for example, renunciation or abandonment in a conspiracy charge under R.C. 2923.01[I]);
2. A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence (for example, that the defendant acted for specified lawful purposes in a charge of abusing harmful intoxicants under R.C. 2925.31).

Intoxication (rendering a defendant incapable of forming the criminal purpose in question), duress, and insanity are affirmative defenses.

Diminished capacity is not a recognized defense in Ohio. A blackout, however, was recognized as an affirmative defense. *State v. Ireland*, 155 Ohio St.3d.287, 2018-Ohio-4494.

The defenses of accident and alibi are not affirmative defenses.

2. **BURDEN.** The burden of going forward with the evidence of (*describe affirmative defense*) and the burden of proving this defense are upon the defendant. He/she must establish such a defense by a preponderance of the evidence.

3. **PREPONDERANCE OF THE EVIDENCE.** OJI-CR 417.29.

**CR 417.29 Preponderance of the evidence R.C. 2901.05(A)**

1. **AFFIRMATIVE DEFENSE; BURDEN.** OJI-CR 417.27.

2. **DEFINED.** Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your minds the evidence opposed to it.

3. **ADDITIONAL.** A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may or may not be identical with (quantity) (the greater number of witnesses).

4. **CONSIDER ALL EVIDENCE.** In determining whether or not an (issue) (affirmative defense) has been proved by a preponderance of the evidence, you should consider all the evidence bearing upon that (issue) (affirmative defense) regardless of who produced it.

5. **EQUALLY BALANCED.** If the weight of the evidence is equally balanced or if you are unable to determine which side of an (issue) (affirmative defense) has the preponderance, then the defendant has not established such (issue) (affirmative defense).



6. EFFECT OF FAILURE. If the defendant fails to establish the defense of \_\_\_\_\_, the state still must prove to you beyond a reasonable doubt all the elements of the crime charged (or any lesser included offense).

### CR 417.31 Prima facie evidence

#### COMMENT

Various criminal statutes contain references to prima facie evidence. The Committee believes that whether or not the prosecution has introduced sufficient evidence to constitute a prima facie case as to every element of a charged offense is not a jury issue. If a statute contains a prima facie standard, it should only be considered by the trial judge in determining if the prosecution has introduced sufficient evidence to deny a motion for judgment of acquittal under Crim. R. 29. In some instances a statutory prima facie standard may constitute a permissive presumption.

### CR 417.33 Evidential presumption

1. PERMISSIVE PRESUMPTIONS. If you find beyond a reasonable doubt that (*insert basic fact[s]*), then you may find (*insert statutory conclusion[s]*). You may regard (*insert basic fact[s]*), if established beyond a reasonable doubt, as sufficient evidence of (*insert statutory conclusion[s]*); however, you are not required to do so. The fact that you may draw this conclusion does not shift the burden of proof from the prosecution to the defendant or place any burden whatsoever on the defendant to introduce any evidence. The prosecution must prove each and every element of the charged offense beyond a reasonable doubt.

#### 2. MANDATORY PRESUMPTIONS

#### COMMENT

Unlike a permissive presumption a mandatory presumption requires the trier of fact to reach a certain conclusion if certain basic fact(s) are proven beyond a reasonable doubt. Mandatory presumptions may be conclusive (may not be rebutted), or rebuttable (may be rebutted by evidence of a certain nature or quality).

In *Sandstrom v. Montana* (1979), 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39, the U.S. Supreme Court held that an instruction on a presumption is unconstitutional if it states or implies that the presumption is conclusive or if it shifts the burden of persuasion to the defendant. The Ohio Supreme Court is in accord. *State v. Price* (1979), 60 Ohio St.2d 136; *State v. Montgomery* (1991), 61 Ohio St.3d 410.

Whether or not a mandatory presumption that shifts only the burden of evidence production, as opposed to a burden of persuasion to the defendant in a criminal case, is constitutional has not been resolved by Ohio courts or the U.S. Supreme Court. See *Francis v. Franklin* (1985), 471 U.S. 307 n.3, 105 S.Ct. 1965, 85 L.Ed.2d 344. See also *State v. Adams* (1982), 3 Ohio App.3d 50.

Until such time as this issue is resolved the Committee believes that instructions on statutory presumptions, if given, should conform to the permissive presumption format (*supra*).

**CR 417.35 Threat [Rev. 10-23-10]**

1. THREAT. "Threat" means (a statement) (conduct) (*describe other means of communication*) whether direct or indirect, exerting pressure sufficient to (overcome the will of another) (make another fearful or apprehensive of injury or harm).

**COMMENT**

Drawn from *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501.

**CR 417.37 Reasonable cause to believe [Rev. 10/10/20]**

In determining whether the defendant had reasonable cause to believe that (*describe the required belief that forms the basis of the offense*), you must put yourself in the position of this defendant with his/her knowledge or lack of knowledge and under the circumstances and conditions that surrounded him/her at that time. You must consider the conduct of the persons involved and determine whether their acts and words and all the surrounding circumstances would have caused a person of ordinary prudence and care to believe that (*describe the required belief that forms the basis of the offense*).

**COMMENT**

Drawn from *Morgan v. Community Health Partners Regional Med. Ctr.*, 9th Dist. Lorain No. 12CA010242, 2013-Ohio-2259.

**CR 417.39 Sexual terms defined [Rev. 12/9/17]**

1. SEXUAL ACTIVITY. "Sexual activity" means sexual conduct or sexual contact, or both.

**COMMENT**

R.C. 2907.01

2. SEXUAL CONDUCT. R.C. 2907.01.

3. VAGINAL INTERCOURSE. "Vaginal intercourse" means penetration of the penis into the vagina.



**COMMENT**

*State v. Roark*, 12th Dist. Warren No. CA2012-04-036, 2013-Ohio-217.

4. **ANAL INTERCOURSE.** “Anal intercourse” means penetration of the penis into the anal opening of a person.

**COMMENT**

Drawn from *State v. Roark*, 12th Dist. Warren No. CA2012-04-036, 2013-Ohio-217; *State v. Alvarado*, 3d Dist. Putnam No. 12-07-14, 2008-Ohio-4411.

5. **FELLATIO.** “Fellatio” means the practice of obtaining sexual satisfaction by oral stimulation of the penis.

**COMMENT**

In re M.D., 38 Ohio St.3d 149 (1988).

6. **CUNNILINGUS.** “Cunnilingus” means a sexual act committed with the mouth and the female sex organ.

**COMMENT**

*State v. Wilson*, 2d Dist. Montgomery Nos. 16728 and 16752 (Aug. 7, 1998);  
*State v. Bailey*, 78 Ohio App.3d 394 (1992).

7. **SEXUAL CONTACT.** “Sexual contact” means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

**COMMENT**

Drawn from R.C. 2907.01(B). The trial court should instruct the jury that the applicable mens rea for sexual contact is purposely. *State v. Dunlap*, 129 Ohio St.3d 461, 2011-Ohio-4111.

8. **MASTURBATION.** “Masturbation” means the manipulation of genital organs for sexual gratification by means other than sexual intercourse.

**COMMENT**

*State v. Johnson*, 2d Dist. Montgomery No. 21335, 2006-Ohio-4935; *Columbus v. Heck*, 10th Dist. Franklin No. 98AP-1384, 1999 Ohio App. LEXIS 5257(Nov. 9, 1999).

9. **BESTIALITY.** “Bestiality” means sexual activity between a human being and an animal.

10. **NUDITY.** “Nudity” means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple or of covered male genitals in a discernibly turgid state. Nudity requires a lewd exhibition or a graphic focus on male or female genitals.

**COMMENT**

Drawn from R.C. 2907.01.

The statutory definition of nudity in R.C. 2907.01 is by itself constitutionally deficient. In *Osborne v. Ohio*, 495 U.S. 103 (1990), the United States Supreme Court held that the limiting phrase so as to constitute a lewd exhibition or involve a graphic focus on the genitals is constitutionally necessary.

With respect to R.C. 2907.323(A)(1), however, the definition of nudity that applies is provided by R.C. 2907.01. *State v. Martin*, Sup.Ct. No. 2014-2028, 2016-Ohio-7196 (Oct. 5, 2016).

11. **SEXUAL MOTIVATION.** “Sexual motivation” means a purpose to gratify the sexual needs or desires of the defendant.

**COMMENT**

Drawn from R.C. 2971.01.

12. **PRIVATE PARTS.** “Private parts” means genitals.

**COMMENT**

In *State v. Jetter*, 74 Ohio App.3d 535 (1st Dist. 1991), the court held that term “private parts” in the public indecency statute did not include a female breast.

13. **SEXUAL EXCITEMENT.** “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.



**COMMENT**

R.C. 2907.01.

14. OBSCENE. R.C. 2907.01; OJI-CR 507.31 § 9.

15. PRURIENT. “Prurient” means a shameful or morbid interest in nudity, sex, or excretion.

**COMMENT**

Drawn from *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

16. SEXUAL ACTIVITY FOR HIRE.

(A) “Sexual activity for hire” means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.

**COMMENT**

R.C. 2907.24. This definition applies to Soliciting of Prostitution. The legislature has not defined the term “sexual activity for hire” for R.C. 2907.21 (Compelling Prostitution), R.C. 2907.22 (Promoting Prostitution), R.C. 2907.23 (Procuring), and R.C. 2907.25 (Prostitution After a Positive H.I.V. Test).

(B) “Sexual activity for hire,” “performance for hire,” and “model or participant for hire” mean an implicit or explicit agreement to provide sexual activity, engage in an obscene, sexually oriented, or nudity oriented performance, or be a model or participant in the production of obscene, sexually oriented, or nudity oriented material, whichever is applicable, in exchange for anything of value paid to (the person) (any person who recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains, or attempts to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the person) (any person associated with a person) engaging in such sexual activity, performance, or modeling or participation.

**COMMENT**

Drawn from R.C. 2905.32 (F)(2). The Committee believes that this definition is applicable to Trafficking Offenses.

17. BROTHEL. “Brothel” means a building in which prostitutes are available.

**COMMENT**

*State v. Poirier*, 6th Dist. Lucas Nos. L-01-1479, L-01-1480, and L-01-1481, 2002-Ohio-4218.

18. **PROSTITUTE.** "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

**COMMENT**

R.C. 2907.01.

19. **HARMFUL TO JUVENILES.** R.C. 2907.01.

20. **JUVENILE.** "Juvenile" means an unmarried person under the age of eighteen.

**COMMENT**

R.C. 2907.01.

21. **MATERIAL.** R.C. 2907.01.

22. **PERFORMANCE.** "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

**COMMENT**

R.C. 2907.01.

23. **SPOUSE.** R.C. 2907.01.

24. **MINOR.** "Minor" means a person under the age of eighteen.

**COMMENT**

R.C. 2907.01.

25. **MENTAL HEALTH CLIENT OR PATIENT.** R.C.2907.01, R.C. 2305.51.

26. **MENTAL HEALTH PROFESSIONAL.** R.C. 2907.01, R.C. 2305.115.

27. **SADO-MASOCHISTIC ABUSE.** "Sado-masochistic abuse" means flagellation



or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

**COMMENT**

R.C. 2907.01.

28. **SEXUALLY ORIENTED.** “Sexually oriented” means any material or performance that shows a person participating or engaging in sexual activity, masturbation, or bestiality.

**COMMENT**

Drawn from R.C. 2919.22(D)(4)(c).

**CR 417.41 Firearm [Rev. 11/17/18]**

1. **FIREARM.** R.C. 2923.11.

2. **DEADLY WEAPON.** “Deadly weapon” means any instrument, device, or thing capable of inflicting death and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11.

3. **CAPABLE OF EXPELLING OR PROPELLING.** When deciding whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, you may rely upon circumstantial evidence including, but not limited to, the representation(s) and action(s) of the individual exercising control over the firearm.

**COMMENT**

Drawn from R.C. 2923.11.

**CR 417.43 Battered Person Syndrome [Rev. 4/13/19]****COMMENT**

The “battered person syndrome” was adopted by the Supreme Court of Ohio in *State v. Koss*, 49 Ohio St.3d 213 (1990), and subsequently codified in R.C. 2901.06

as the “battered woman syndrome.” Notwithstanding the statutory title, it is not limited to a woman, but applies to any family member suffering from the syndrome as established by the evidence. *See State v. Nemeth*, 82 Ohio St.3d 202 (1998); *State v. Stowers*, 81 Ohio St.3d 260 (1998) (permitting expert testimony on “battered child syndrome”). There is no reason to treat women and children, similarly situated, in a different manner. *State v. Nemeth*, 7th. Dist. Jefferson No.95-JE-32 (Jan. 30, 1997), motion for reconsideration overruled (Mar. 19, 1997). Courts in other states have also applied the “battered person syndrome” based upon the relationship of the persons and any pattern of abuse, regardless of the sex of the person asserting the “battered person syndrome.” *State v. Curley*, 250 So.3d 236 (La.2018); *State v. Doe*, 421 S.C. 490, 808 S.E.2d 807 (2017).

1. **BATTERED PERSON SYNDROME BY DEFENDANT.** The expert evidence about the (abuse) (battering) of the defendant by (*insert name of [deceased] [injured person]*) does not in itself establish (self-defense) (justification) (duress) (insanity) (serious provocation) (*insert other reason*). The evidence is designed to assist you as you consider the defendant’s (ability to leave the relationship) (non-reporting of prior abuse) (non-confrontational killing). You may consider that evidence in deciding whether he/she had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of death or great bodily harm and that the only reasonable means of escape from such danger was by the use of deadly force. In that event, the defendant had no duty to (retreat) (escape) (withdraw), even though he/she was mistaken as to the existence of that danger.

#### COMMENT

Drawn from R.C. 2901.06.

Expert evidence of battered woman syndrome/battered person syndrome is admissible under Evid.R. 702, and the jury may consider that evidence to decide whether the use of deadly force was justified in self-defense. *State v. Thomas*, 77 Ohio St.3d 323 (1997); *State v. Koss*, 49 Ohio St.3d 213 (1990).

Battered person syndrome may be raised as part of self-defense or to support a jury instruction for a lesser included offense. *State v. Koss*, 49 Ohio St.3d 213 (1990). The battered person syndrome may apply to the issue of serious provocation occasioned by the victim for a jury instruction on an inferior degree offense of voluntary manslaughter to a murder charge. *See State v. Nemeth*, 82 Ohio St.3d 202 (1980); *State v. Rodvold*, 6th Dist. Huron No. H-10-12, 2012-Ohio-619. Battered person syndrome may also apply to the affirmative defense of duress or insanity. *See State v. Lillo*, 6th Dist. Huron No. H-10-001, 2010-Ohio-6221 (duress); R.C. 2945.392 (insanity).

2. **BATTERED PERSON SYNDROME BY STATE.** The expert evidence about the (abuse) (battering) by the defendant to (*insert name of [deceased] [injured person]*) was presented to assist you to explain (*insert name of [deceased] [injured person]*)’s behavior. You may consider the expert evidence when considering the (ability to leave



the relationship) (non-reporting of prior abuse) (recanting of prior allegations of abuse) by (insert name of [deceased] [injured person]) or to understand the reaction to the (abuse) (battering) when you are considering the credibility of (insert name of [deceased] [injured person]).

#### COMMENT

The battered person syndrome is not limited to self-defense and may be presented by the state in its case in chief to explain to the jury why a person would continue to stay in an abusive relationship. *State v. Haines*, 112 Ohio St.3d 393, 2006-Ohio-6711. The state is not required to wait for rebuttal to present expert testimony when the victim's credibility could be attacked on cross examination or in opening statement to the jury.

The expert testimony should be limited to 1) the general characteristics of a victim suffering from battered person syndrome and 2) hypothetical questions regarding specific abnormal behavior exhibited by a person suffering from battered person syndrome, but not a specific opinion regarding whether the victim/witness in the case was a battered person. *State v. Haines*. See also *State v. Goff*, 128 Ohio St.3d 169, 2010-Ohio-6317 (finding reversible error to permit state's expert witness to testify to the defendant's credibility in response to defense of battered person syndrome).

### 3. OTHER ACTS AND PRIOR CONVICTIONS. OJI-CR 401.25.

#### COMMENT

Appropriate instructions should be given to the jury regarding the limits of the expert's testimony and testimony about any convictions or acts by the defendant that are not directly involved in the case.

### 4. EXPERT WITNESS AND HYPOTHETICAL QUESTION. OJI-409.21.

# Chapter CR 421

## DEFENSES

- CR 421.01 Accident
- CR 421.03 Alibi
- CR 421.05 Character and reputation
- CR 421.07 Intoxication R.C. 2901.21(C)
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- CR 421.19 Self defense against danger of death or great bodily harm [Rev. 9/12/20]
- CR 421.19 Self-defense, defense of residence—use of non-deadly force R.C. 2901.05 (effective 4/6/21) [Rev. 12/4/21]
- CR 421.191 Defense of another—use of non-deadly force R.C. 2901.05 (effective 4/6/21) [Rev. 12/4/21]
- CR 421.21 Self-defense against danger of bodily harm [Rev. 9/12/20]
- CR 421.21 Self-defense, defense of residence—use of deadly force R.C. 2901.05 (effective 4/6/21) [Rev. 12/4/21]
- CR 421.211 Defense of another against danger of death or great bodily harm—use of deadly force R.C. 2901.05 (effective 3/28/19) [Rev. 12/4/21]
- CR 421.23 Presumption—self-defense, defense of another—when in a residence or vehicle, use of deadly force R.C. 2901.05 (offenses committed on and after 3/28/19) [Rev. 12/4/21]
- CR 421.25 Insanity: defined [Rev. 4/13/19]
- CR 421.27 Insanity: kinds
- CR 421.29 Insanity: burden and conclusion
- CR 421.01 Accident

1. The defendant denies any purpose to (*describe*). He denies that he committed an unlawful act and says that the result was accidental.
2. DEFINED. An accidental result is one that occurs unintentionally and without any design or purpose to bring it about. An accident is a mere physical happening or event,



out of the usual order of things and not reasonably (anticipated) (foreseen) as a natural or probable result of a lawful act.

3. FORESEEABILITY. OJI-CR 417.25.

4. CONCLUSION ON ACCIDENT. If after considering all the evidence, including that on the subject of accident, you are not convinced beyond a reasonable doubt that the defendant had a purpose to (*describe*), you must return a verdict of not guilty.

**COMMENT**

An instruction on accident is not recommended unless required by the evidence, argument or request of counsel.

The claim of accident is not an affirmative defense. The committee recommends that no statement be given to that effect because it is unnecessary and it is confusing unless there exists a second defense on which the defendant has the burden of proof. Cited in *State v. Poole* (1973), 33 Ohio St.2d 18, 62 O.O.2d 340, 294 N.E.2d 888.

**CR 421.03 Alibi**

1. The defendant claims that he was at some other place at the time the offense occurred. This is known as an alibi. The word "alibi" means elsewhere or a different place. If the evidence fails to establish that the defendant was elsewhere, such failure does not create an inference that the defendant was present at the time when and at the place where an offense may have been committed. If, after a consideration of the evidence of alibi along with all the evidence, you are not convinced beyond a reasonable doubt that the defendant was present at the time in question, you must return a verdict of not guilty.

**COMMENT**

The claim of alibi is not an affirmative defense. The committee recommends that no statement be given to that effect because it is unnecessary and it is confusing unless there exists a second defense on which the defendant has the burden of proof. *State v. Poole* (1973), 33 Ohio St.2d 18, 62 O.O.2d 340, 294 N.E.2d 888.

2. NOTICE REQUIRED FOR ALIBI.

**COMMENT**

Crim.R. 12.1 provides for seven days' notice of alibi. The notice is mandatory. *State v. Focht* (1974), 37 Ohio St.2d 173, 66 O.O.2d 359, 309 N.E.2d 922. But, where there is a good faith failure to give notice of alibi and the prosecution is not surprised or otherwise prejudiced thereby, it is an abuse of discretion for the court to exclude the evidence. *State v. Smith* (1977), 50 Ohio St.2d 51, 4 O.O.3d 118, 362 N.E.2d 988.

**CR 421.05 Character and reputation**

1. **GENERAL.** The defendant has offered testimony tending to show his reputation in the community in which he lives. Evidence of this nature is admitted because one who has a good reputation may be less likely to commit an offense than one who lacks that reputation. However, good character or good reputation is not an excuse for an offense.

**COMMENT**

See Evid.R. 404, 405, 608(A), 608(B), and 803(20).

2. **WEIGHT.** In determining the guilt or innocence of the defendant, you may consider the testimony of his reputation and give it such weight as you determine it should receive in connection with all the evidence.

**COMMENT**

See Evid.R. 404, 405, 608(A), 608(B), and 803(20).

**CR 421.07 Intoxication R.C. 2901.21(C)****COMMENT**

Effective 10/27/00, voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a crime. Voluntary intoxication may be admissible to show whether or not a person was physically capable of performing the act with which the person is charged. R.C. 2901.21(C).

1. **DEFENSE.** Intoxication is not an excuse for an offense. However, evidence of intoxication has been admitted for the purpose of showing that the defendant was so intoxicated that he/she was incapable of performing the act with which he/she has been charged.



**CR 421.09 Intoxication and purpose (non-homicide case) (offenses committed before 10/27/00)**

1. **DEFINED.** Intoxication exists when a person consumes a quantity of an intoxicating beverage containing alcohol sufficient to adversely affect his/her mental processes (conduct) (actions) (reactions) (movement) and to deprive him/her of that clearness of intellect (control of himself/herself) that he/she would otherwise have possessed.

**COMMENT**

*State v. Steele* (1952), 95 Ohio App. 107, 52 O.O. 488, 117 N.E.2d 617.

2. **PURPOSE, KNOWLEDGE.** Intoxication is not an excuse for an offense. However, such evidence is admissible for the purpose of showing that the defendant was so intoxicated that he/she was incapable of (forming the purpose) (having the knowledge) to commit the offense of \_\_\_\_\_.

3. **BURDEN.** On this issue the burden of proof is upon the defendant to establish by a preponderance or greater weight of the evidence that at the time in question he/she was so influenced by alcohol that he/she was incapable of (forming a purpose) (having the knowledge) to commit the offense.

**COMMENT**

*Long v. State* (1923), 109 Ohio St. 77, 141 N.E. 691.

4. **PREPONDERANCE.** OJI-CR 417.29.

5. **CONCLUSION.** If you find by a preponderance or greater weight of the evidence that the defendant was incapable of (forming a purpose) (having the knowledge) to commit the offense, then you must find the defendant not guilty, because (purpose) (knowledge) is an essential element of the offense as I have previously instructed you.

**COMMENT**

*State v. Griffin* (1962), 116 Ohio App. 235, 22 O.O.2d 67, 180 N.E.2d 924.

For intoxication in motor vehicle cases see OJI-CV 411.25.

The above must be modified for homicide cases. *State v. Salmon* (1967), 10 Ohio App.2d 175, 39 O.O.2d 336, 226 N.E.2d 784. For intoxication, drugs, or anger in a homicide case, see OJI-CR 421.11.

The above instruction may be modified to include the purpose of showing that his condition was due to the use of drugs.

An accused does not have a constitutional right to refuse to take a reasonably

reliable chemical test for intoxication. *Westerville v. Cunningham* (1968), 15 Ohio St.2d 121, 44 O.O.2d 119, 239 N.E.2d 40; *McNulty v. Curry* (1975), 42 Ohio St.2d 341, 71 O.O.2d 317, 328 N.E.2d 798; *Schmerber v. California* (1966), 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908.

6. **FAILURE BY THE STATE.** (However,) if you find that the state failed to prove beyond a reasonable doubt that the defendant had the (purpose) (knowledge) to commit the offense of \_\_\_\_\_ (or any lesser included offense) you must find the defendant not guilty.

#### COMMENT

Assertion of an affirmative defense does not relieve the state of the duty to establish all essential elements beyond a reasonable doubt.

#### **CR 421.09 Intoxication and purpose (non-homicide case) (offenses committed on and after 10/27/00)**

#### COMMENT

Effective 10/27/00, voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a crime. Voluntary intoxication may be admissible to show whether or not a person was physically capable of performing the act with which the person is charged. R.C. 2901.21(C).

#### **CR 421.11 Intoxication, drugs or anger (homicide case) (offenses committed before 10/27/00)**

1. To determine whether the defendant was influenced by the effect of (intoxication) (alcohol) (drugs) (anger) to such an extent that his/her mind could not and did not form a purpose to \_\_\_\_\_ you will consider the facts and circumstances relating to his/her condition at the time in question.

2. If you find by a preponderance or greater weight of all the evidence that by reason of (anger) (intoxication) (alcohol) (drugs) the mind of the accused was in such condition that he/she was not capable of forming a purpose to \_\_\_\_\_, then he/she is not guilty of \_\_\_\_\_ as purpose is an essential element of (that offense) (the offense charged in the indictment) (and of each of the lesser offenses included in the indictment).

3. **FAILURE BY THE STATE.** OJI-CR 421.09 § 6.

4. **LESSER OFFENSE WITHOUT PURPOSE.** However, even if you find that the defendant did not have the required purpose, you must thereafter consider whether the defendant is guilty of the offense of \_\_\_\_\_ as purpose is not an element of this offense.



**COMMENT**

Modified from *State v. Vargo* (1927), 116 Ohio St. 495, 156 N.E. 600 as reported in *State v. Salmon* (1967), 10 Ohio App.2d 175, 39 O.O.2d 336, 226 N.E.2d 784. Use of the expression “or greater weight of the evidence” may eliminate the use of the longer definition. OJI-CR 417.29. Similar instructions relating to intoxication appear at OJI-CR 421.09.

Lack of knowledge may be similarly submitted, if appropriate.

**CR 421.11 Intoxication, drugs or anger (homicide case) (offenses committed on and after 10/27/00)****COMMENT**

Effective 10/27/00, voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a crime. Voluntary intoxication may be admissible to show whether or not a person was physically capable of performing the act with which the person is charged. R.C. 2901.21(C).

**CR 421.13 Necessity****COMMENT**

Unlike the affirmative defenses of self defense and duress which require the application or threat of immediate harm to the defendant by another person, the affirmative defense of necessity involves the application or threat of a natural force. See *The Queen v. Dudley and Stephens* (1884-85), LR 14 Q.B.D. 273.

In a prosecution for criminal trespass under R.C. 2911.21 or similar municipal ordinance, necessity is not an affirmative defense but part of the definition of “privilege” as defined in R.C. 2901.01(A)(12). Since lack of privilege is an element of the offense of criminal trespass, a definition of necessity should be included as part of those instructions. *City of Columbus v. Andrews* (February 27, 1992), Franklin App. Nos. 91 AP-590, 880, and 881, unreported.

**1. GENERAL. OJI-CR 417.27.**

**2. NECESSITY.** The defendant claims that he/she committed the offense of (*insert name of offense*) because of necessity. The defense of necessity justifies or excuses criminal conduct when the defendant acts under the force of extreme circumstances to prevent a greater harm from occurring. However the defense of necessity is not available if alternatives to commission of the offense are available.

**COMMENT**

*City of Columbus v. Andrews, supra; City of Cleveland v. Sundermeier* (1989), 48 Ohio App.3d 204, 549 N.E. 2d 561.

3. **ELEMENTS.** To establish the defense of necessity the defendant must prove by the greater weight of the evidence all of the following:

(A) the defendant committed the offense of (*insert name of offense*) to avoid being harmed by (*describe physical or natural force*); and

(B) the harm that would have resulted from (*describe physical or natural force*) would have been as (great) (severe) as, or (greater) (more severe) than the harm caused by the defendant's conduct; and

(C) the defendant reasonably believed at the time his/her conduct to be necessary and designed to avoid the (immediate) (imminent) harm that would be caused by (*describe physical or natural force*); and

(D) the defendant did not (cause) (bring about) the (situation) (circumstances) which would result in the harm caused by (*describe physical or natural force*); and

(E) the harm that would be caused by (*describe physical or natural force*) was (immediate) (imminent) and the defendant had no alternative to avoid it other than committing the offense of (*insert name of offense*).

**COMMENT**

*City of Columbus v. Andrews* (February 27, 1992), Franklin App. Nos. 91 AP-590, 880, and 881, unreported; *State v. Prince* (1991), 71 Ohio App.3d 694, 595 N.E.2d 376.

**CR 421.15 : Duress [Rev. 4/13/19]**

1. **GENERAL.** The defendant claims the defense of duress, that he/she acted out of fear for his/her life or of great bodily harm. When a person is forced to participate in an offense against his/her will because he/she honestly believes and has good reason to believe that he/she is in immediate danger of death or great bodily harm, and that there was no reasonable opportunity to escape, he/she is entitled to be acquitted on the ground of duress.

**COMMENT**

Duress is an affirmative defense. *State v. Sappienza*, 84 Ohio St. 63 (1911).

2. **PREPONDERANCE.** OJI-CR 417.29.



3. **BATTERED PERSONS.** OJI-CR 417.43. The defendant claims the defense of duress, that he/she acted out of fear for his/her life or of great bodily harm. When a person is forced to participate in an offense against his/her will because he/she honestly believes and has good reason to believe that he/she is in immediate danger of death or great bodily harm, and that there was no reasonable opportunity to escape, he/she is entitled to be acquitted on the ground of duress.

**COMMENT**

*State v. Lillo*, 6th Dist. Huron No. H-10-001, 2010-Ohio-6221.

4. **CONCLUSION ON DURESS.** If you find by the preponderance or greater weight of the evidence that the will of the defendant was overcome by fear of death or great bodily harm at the hand of (*insert source of duress*) and that it was reasonable for him/her to believe that he/she could not avoid participation without immediate exposure to death or great bodily harm, then you must find him/her not guilty.

5. **EFFECT OF FAILURE.** OJI-CR 417.29 § 6, OJI-CR 421.09 § 6.

**COMMENT**

*See State v. Milam*, 108 Ohio App. 254 (8th Dist. 1959). Under R.C. 2929.04(B)(2), duress is a mitigating factor in death penalty cases.

In some situations, fear for the life of another may constitute duress.

**CR 421.17 Unlawful entrapment**

1. The defendant denies that he intended, or formed a purpose, to commit an offense. He claims that he is excused because he was entrapped by the police.

2. **DEFINED.** Entrapment occurs when a police officer plants in the mind of the defendant the original idea or purpose, thus furnishing from the start the incentive (moving force) to commit an offense that the defendant had not considered and which he would not have carried out except for that incentive (moving force). If the defendant did not himself conceive of committing the offense, and if it was suggested to him by the officer for the purpose of causing his arrest and prosecution, the defendant must be found not guilty. Briefly, the whole criminal idea and purpose originates with the police, not with the defendant.

**COMMENT**

It is error to refuse to define "police officers" to include unpaid agents and informants when the evidence raises the issue and the court is specifically requested to do so. *Sherman v. United States* (1958), 356 U.S. 369, 78 S.Ct. 819, 2 L.Ed.2d 848; *State v. Milbern* (Feb. 26, 1987), Montgomery App. No. 9720, unreported. See

*State v. McDonald* (1972), 32 Ohio App.2d 231, 61 O.O.2d 252, 289 N.E.2d 583, paragraph one of the syllabus.

3. **WHEN NOT A DEFENSE.** However, if the defendant commits an offense while carrying out (attempting to carry out), even in part, his own idea or purpose to violate the law, there is no entrapment. The officer may go so far as to suggest the offense and to provide the opportunity (facilities) to commit it (or to aid and encourage the defendant to commit it); and if the defendant is already disposed to commit the offense and acts pursuant to a criminal idea or purpose of his own, then there is no entrapment and the defendant may be found guilty.

#### COMMENT

"There is no entrapment where criminal intent originates in the mind of the accused, and law enforcement authorities merely afford opportunities or facilities for the commission of the offense." *State v. Dutton Drugs, Inc.* (1965), 3 Ohio App.2d 118, 32 O.O.2d 204, 209 N.E.2d 597. See also *Sorrells v. United States* (1932), 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413, and *State v. McDonald* (1972), 32 Ohio App.2d 231, 61 O.O.2d 252, 289 N.E.2d 583.

4. **ACTING FOR POLICE.** When a person honestly and in good faith carries out the instructions of a police officer and acts for the exclusive purpose of assisting in law enforcement, he does not violate the law. But if such person acts, even in part, upon his own responsibility and with the purpose of violating the law, he is responsible for his criminal acts.

5. **ENTRAPMENT—AFFIRMATIVE DEFENSE.** Entrapment is an affirmative defense and the defendant has the burden to prove entrapment by a preponderance of the evidence. The defense of entrapment is established where the criminal (design) (plan) (idea) originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order to prosecute.

#### COMMENT

*State v. Doran* (1983), 5 Ohio St.3d 187, 449 N.E.2d 1295.

### CR 421.19 Self defense against danger of death or great bodily harm [Rev. 9/12/20]

1. **GENERAL.** OJI-CR 417.27.
2. **SELF DEFENSE.** The defendant claims to have acted in self defense. To establish a claim of self defense, the defendant must prove by the greater weight of the evidence that



(A) he/she was not at fault in creating the situation giving rise to (*describe the event in which death or injury occurred*); and

(B) he/she had reasonable grounds to believe and an honest belief, even if mistaken, that he/she was in (imminent) (immediate) danger of death or great bodily harm, and that his/her only reasonable means of (retreat) (escape) (withdrawal) from such danger was by the use of deadly force; and

(C) he/she had not violated any duty to (retreat) (escape) (withdraw) to avoid the danger.

#### COMMENT

*State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Jackson*, 22 Ohio St.3d 281 (1986); *State v. Robbins*, 58 Ohio St.2d 74 (1979), citing *State v. Melchior*, 56 Ohio St.2d 15 (1978).

A defendant asserting self defense cannot introduce evidence of specific instances of a victim's conduct to prove that the victim was the initial aggressor. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68.

### 3. DUTY TO RETREAT. The defendant had a duty to retreat if he/she

(*Use appropriate alternative[s]*)

(A) was at fault in creating the situation giving rise to the (*describe the event in which death or injury occurred*).

(*or*)

(B) did not have reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of death or great bodily harm or that he/she had a reasonable means of escape from that danger other than by the use of deadly force.

#### COMMENT

Drawn from *State v. Reid*, 3 Ohio App.2d 215 (1965).

### 4. NO DUTY TO RETREAT.

(A) GENERAL The defendant no longer had a duty to retreat if

(1) he/she ([retreated] [escaped] [withdrew] from the situation) (reasonably indicated his/her intention to [retreat] [escape] [withdraw] from the situation and no longer participate in it); and

(2) he/she then had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of death or great bodily harm; and

(3) the only reasonable means of escape from that danger was by the use of deadly

force, even though he/she was mistaken as to the existence of that danger.

#### COMMENT

Drawn from *State v. Reid*, 3 Ohio App.2d 215 (1965).

(B) **DEFENSE OF BUSINESS.** If the defendant was assaulted in his/her (home) (business), or if the (home) (business) was attacked, the defendant had no duty to (retreat) (escape) (withdraw) and could use such means as are necessary to repel the assailant from the (home) (business), or to prevent any forcible entry to the (home) (business), even deadly force, provided that he/she had reasonable grounds to believe and an honest belief that the use of deadly force was necessary to repel the assailant or to prevent the forcible entry.

#### COMMENT

*State v. Peacock*, 40 Ohio St. 333 (1883), cited with approval in *State v. Williford*, 49 Ohio St.3d 247 (1990); see also *Graham v. State*, 98 Ohio St. 77 (1918).

R.C. 2901.09, effective 9/9/08, provides circumstances under which a person has no duty to retreat in his or her residence or vehicle. This statute does not change the common law rule concerning the duty to retreat in a business as pronounced in *Graham v. State*, 98 Ohio St. 77 (1918).

(C) **DEFENSE OF HOME** (offenses committed before 9/9/08). If the defendant was assaulted in his/her home, or if the home was attacked, the defendant had no duty to (retreat) (escape) (withdraw) and could use such means as were necessary to repel the assailant from the home, or to prevent any forcible entry to the home, even deadly force, provided that he/she had reasonable grounds to believe and an honest belief that the use of deadly force was necessary to repel the assailant or to prevent the forcible entry.

#### COMMENT

*State v. Peacock*, 40 Ohio St. 333 (1883), cited with approval in *State v. Williford*, 49 Ohio St.3d 247 (1990); see also *Graham v. State*, 98 Ohio St. 77 (1918).

"There is no duty to retreat from one's own home before resorting to lethal force in self defense against a co-habitant with an equal right to be in the home." *State v. Thomas*, 77 Ohio St.3d 323 (1997).

(D) **DEFENSE OF RESIDENCE OR VEHICLE** (offenses committed on and after 9/9/08). A person who lawfully is in his/her residence has no duty to retreat before using force in (self defense) (defense of another) (defense of his/her residence), and a person who (lawfully is an occupant of his/her vehicle) (lawfully is an occupant in



a vehicle owned by his/her immediate family member) has no duty to retreat before using force in (self defense) (defense of another).

**COMMENT**

*Drawn from R.C. 2901.09.*

5. **DEFENSE OF ANOTHER.** The defendant claims to have acted in defense of (*insert name of person defended*). The defendant had no greater rights than (*insert name of person defended*) and was justified in using deadly force only if

(A) (*insert name of person defended*) was not at fault in creating the situation giving rise to (*describe the event in which death or injury occurred*) and had no duty to (retreat) (escape) (withdraw), and

(B) the defendant had reasonable grounds to believe and an honest belief, even if mistaken, that (*insert name of person defended*) was in (imminent) (immediate) danger of death or great bodily harm and that the only means of protecting him/her was by the use of deadly force.

**COMMENT**

Drawn from *State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Wenger*, 58 Ohio St.2d 336 (1979); and *State v. Marsh*, 71 Ohio App.3d 64 (1990). The Committee believes that if the person defended has a duty to retreat, escape, or withdraw, then the defendant is not justified in using deadly force.

The Committee believes that consideration of the right to use force of both the defendant and the person defended is necessary. See *State v. Smith*, 4th Dist. Washington No. 02CA75, 2003-Ohio-1712.

A defendant may be entitled to a defense of another instruction even if the person being defended is unaware of the danger or necessity for using force. *State v. Harris*, 129 Ohio App.3d 527 (1998). The person defended need not testify as to his/her knowledge concerning the danger or the need for the use of force if the defendant presents evidence supporting the elements of the defense. *Id.*

The right to defend another does not depend upon a family relationship. *State v. Wenger*, 58 Ohio St.2d 336 (1979), and a family relationship between the defendant and the person defended (such as, son and father) does not give the defendant any greater right to use deadly force. *Sharp v. State*, 19 Ohio 379 (1850).

6. **RESIDENCE.** "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

**COMMENT**

R.C. 2901.05(D)(3).

7. **DWELLING.** “Dwelling” means a (building) (*specify conveyance*) of any kind that has a roof over it and that is designed to be occupied by people lodging in the (building) (*specify conveyance*) at night, regardless of whether the (building) (*specify conveyance*) is temporary or permanent or is mobile or immobile. (A [building] [*specify conveyance*] includes, but is not limited to, an attached porch, and a [building] [*specify conveyance*] with a roof over it includes, but is not limited to, a tent.)

**COMMENT**

Drawn from R.C. 2901.05(D)(2).

8. **VEHICLE.** “Vehicle” means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

**COMMENT**

R.C. 2901.05(D)(4).

9. **IMMEDIATE FAMILY.** “Immediate family” means a person’s spouse residing in the person’s household, brothers and sisters of the whole or the half blood, and children, including adopted children.

**COMMENT**

R.C. 2905.21.

10. **BATTERED WOMAN/CHILD SYNDROME.** The expert evidence about the (abuse) (battering) of the defendant by the (deceased) (injured person) does not in itself establish self defense. You may consider that evidence in deciding whether the defendant was at fault and whether he/she had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of death or great bodily harm and that the only reasonable means of escape from such danger was by the use of deadly force. In that event, the defendant had no duty to (retreat) (escape) (withdraw), even though he/she was mistaken as to the existence of that danger.



**COMMENT**

Expert evidence of battered woman syndrome is admissible, and the jury may consider that evidence to decide whether the use of deadly force was justified in self defense. *State v. Thomas* (1997), 77 Ohio St.3d 323; *State v. Koss* (1990), 49 Ohio St.3d 213. See also *State v. Nemeth* (1998), 82 Ohio St.3d 202 (battered child syndrome).

11. **WORDS (ADDITIONAL).** Words alone do not justify the use of force. Resort to force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

**COMMENT**

*State v. Shane*, 63 Ohio St.3d. 630 (1992); *State v. Howard*, 10th Dist. Franklin No. 16AP-226, 2017-Ohio-8742.

12. **TEST FOR REASONABLENESS.**

(A) **SELF DEFENSE.** In deciding whether the defendant had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of death or great bodily harm, you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim*) and decide whether his/her acts and words caused the defendant reasonably and honestly to believe that he/she was about to be killed or receive great bodily harm.

**COMMENT**

Drawn from *State v. Koss*, 49 Ohio St.3d 213 (1990).

(B) **DEFENSE OF ANOTHER.** In deciding whether the defendant had reasonable grounds to believe and an honest belief that (*name of person defended*) was in (imminent) (immediate) danger of death or great bodily harm, you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim*) and decide whether his/her acts and words caused the defendant reasonably and honestly to believe that (*insert name of person defended*) was about to be killed or receive great bodily harm.

**COMMENT**

A defendant can be entitled to a defense-of-another instruction even if the person being defended is unaware of the danger or necessity for using force. The person defended need not testify as to his/her knowledge concerning the danger or the need for the use of force if the defendant presents evidence supporting the elements of the defense. *State v. Harris*, 129 Ohio App.3d 527 (10th Dist. 1998).

13. **EXCESSIVE FORCE (ADDITIONAL).** A person is allowed to use force that is reasonably necessary under the circumstances to protect himself/herself from an apparent danger. If the defendant used more force than reasonably necessary and if the force used is greatly disproportionate to the apparent danger, then the defense of (self-defense) (defense of another) is not available.

**CR 421.19 Self-defense, defense of residence—use of non-deadly force R.C. 2901.05 (effective 4/6/21) [Rev. 12/4/21]**

**COMMENT**

Effective 4/6/21, the General Assembly, in R.C. 2901.09, abolished the duty to retreat for any person who was in a place where he/she lawfully had a right to be when he/she used force in self-defense, defense of another, or defense of his/her residence. Because the General Assembly did not explicitly state whether R.C. 2901.09 applies to offenses that were committed before and tried after 4/6/21, the court must decide as a threshold matter whether amended R.C. 2901.09 applies as of the date of the trial or the date of the offense. Because the language in R.C. 2901.09(C) states what a trier of fact shall not consider, the Committee believes this amendment is applicable to all instructions given on and after 4/6/21.

Effective 3/28/19, R.C. 2901.05 shifted the burden of proof from a defendant having to prove self-defense, defense of another, or defense of his/her residence by a preponderance of the evidence to the state having to disprove at least one of the elements of self-defense, defense of another, or defense of his/her residence beyond a reasonable doubt. Under the amended statute, the defendant retains the burden of production, which is the burden of producing evidence “that tends to support” that the defendant used the force in self-defense, defense of another, or defense of his/her residence. *State v. Carney*, 10th Dist. Franklin No. 19AP-402, 2020-Ohio-2691; *State v. Petway*, 11th Dist. Lake No. 2019-L-124, 2020-Ohio-3848.

Because the General Assembly did not express a clear intent whether R.C. 2901.05 applies to offenses that were committed before and tried after 3/28/19, the court must decide as a threshold matter whether the amended R.C. 2901.05 applies as of the date of the trial or the date of the offense.

The trial court should check its specific appellate district. In *State v. Lewis*, 12th Dist. Butler No. CA2019-07-128, 2020-Ohio-3762, citing *State v. Humphries*, 51 Ohio St.2d 95 (1977), paragraph four of the syllabus and *State v. Gloff*, 12th Dist. Clermont No. CA2019-06-047, 2020-Ohio-3143, the Twelfth District Court of



Appeals determined the burden-shifting change made through the amendment to R.C. 2901.05 applies to every criminal trial held on and after 3/28/19, regardless of when the offense(s) may have occurred. In *State v. Brooks*, 5th Dist. Richland No. 2019 CA 0104, 2020-Ohio-4123, however, the Fifth District Court of Appeals decided that the amended statute applies according to the date of the offense, not the date of trial. See also *State v. Williams*, 3d Dist. Allen No. 1-19-39, 2019-Ohio-5381; *State v. Brown*, 9th Dist. Wayne No. 19AP0004, 2020-Ohio-529. In *State v. Irvin*, 2d Dist. Montgomery No. 28495, 2020-Ohio-4847, the court decided that the changes to the burden of proof were not applicable to offenses that occurred before 3/28/19 and certified a conflict with *Gloff* to the Supreme Court.

A trial court is not required to instruct the jury on self-defense in every situation in which the presentation is attempted; rather, a court need only instruct the jury on self-defense if sufficient evidence is introduced that, if believed, would raise a question in the minds of reasonable jurors concerning the existence of such issue. See *State v. Hatfield*, 9th Dist. Summit No. 23716, 2008-Ohio-2431; *State v. Bitting*, 9th Dist. Summit No. 29238, 2019-Ohio-2304, *appeal not allowed*, 157 Ohio St.3d 1407, 2019-Ohio-3731.

A trial court may not refuse a requested instruction if it is a “correct, pertinent statement of the law” and “appropriate to the facts.” *Smith v. Lessin*, 67 Ohio St.3d 487 (1993). It is within the sound discretion of the trial court to determine whether the evidence is sufficient to require a jury instruction. *State v. Mitts*, 81 Ohio St.3d 223, 1998-Ohio-635; see also *State v. Wolons*, 44 Ohio St.3d 64 (1989). The trial court cannot give a jury instruction on the affirmative defense of self-defense if there is insufficient evidence. See *Stateten v. Schwendeman*, 4th Dist. Athens No. 17CA7, 2018-Ohio-240. In deciding whether the evidence was sufficient, the trial court neither resolves evidentiary conflicts nor assesses the credibility of witnesses, as both are functions reserved for the trier of fact. *State v. Jones*, 1st Dist. Hamilton Nos. C-120570 and C-120571, 2013-Ohio-4775, citing *State v. Williams*, 197 Ohio App.3d 505, 2011-Ohio-6267 (1st Dist.). See also *State v. Berry*, 3d Dist. Defiance No. 4-12-03, 2013-Ohio-2380 (“Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence.”).

The Fourth District held that the phrase “tends to support” as used in R.C. 2901.05(B)(1) does not create a new standard for determining whether a defendant is entitled to a self-defense instruction. *State v. Tolle*, 4th Dist. Adams No. 19CA1095, 2020-Ohio-935. The evidence must be sufficient to raise a question in the mind of a reasonable juror, as is already required under the existing standard. *State v. Melchior*, 56 Ohio St.2d 15 (1978). The Eleventh District held that in order for evidence to “tend to support” that force was used in self-defense, it must “serve, contribute, or conduce in some degree or way” to support that the force was used in self-defense. *State v. Petway*, *supra*. See also *State v. Parrish*, 1st Dist. Hamilton No. C-190379, 2020-Ohio-4807.

If there is a factual question about whether the force used was deadly or non-deadly, the court should give the full instruction on deadly force contained in OJI-CR 421.21 as well as non-deadly force. See *State v. Triplett*, 8th Dist. Cuyahoga No. 97522, 2012-Ohio-3804.

1. GENERAL. A person is allowed to use non-deadly force in (self-defense) (defense

of his/her residence). The state must prove beyond a reasonable doubt that the defendant, when using non-deadly force, did not act in (self-defense) (defense of his/her residence).

2. **STATE'S PROOF.** To prove that the defendant's use of non-deadly force was not in (self-defense) (defense of his/her residence), the state must prove beyond a reasonable doubt at least one of the following:

- (A) the defendant was at fault in creating the situation giving rise to (*describe the event in which the use of non-deadly force occurred*); or
- (B) the defendant did not have reasonable grounds to believe that he/she was in (imminent) (immediate) danger of bodily harm; or
- (C) the defendant did not have an honest belief, even if mistaken, that he/she was in (imminent) (immediate) danger of bodily harm; or
- (D) the defendant used unreasonable force.

#### COMMENT

The defendant is presumed to have acted in self-defense when in his/her residence or vehicle. *See* OJI-CR 421.23; R.C. 2901.05(B)(2).

The statute does not define self-defense, and therefore the Committee believes that the common-law elements of self-defense are applicable. *See State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Jackson*, 22 Ohio St.3d 281 (1986); *State v. Robbins*, 58 Ohio St.2d 74 (1979), citing *State v. Melchior*, 56 Ohio St.2d 15 (1978); *State v. Gray*, 2d Dist. Montgomery No. 26473, 2016-Ohio-5869.

If self-defense is an issue, the defendant may not introduce evidence of prior instances of a victim's conduct to prove that the victim was the initial aggressor. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68; *see also State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426. The Committee believes that evidence of prior instances of a victim's conduct is admissible for other purposes, such as the defendant's reasonable belief in acting in self-defense. For example, see "Battered Person" at OJI-CR 417.43 and Evid.R. 404(B).

3. **NON-DEADLY FORCE.** "Non-deadly force" means any force that does not carry with it a substantial risk that it will proximately result in the death of a person.

#### COMMENT

Drawn from R.C. 2901.01; *State v. Hale*, 2d Dist. Montgomery No. CA-11473 (Oct. 13, 1989). Absent other circumstances, a punch is "non-deadly force," even if it results in death or great bodily injury or harm. *State v. Davis*, 10th Dist. Franklin No. 17AP-438, 2018-Ohio-58. On the other hand, use of a weapon or other object that could cause death or great bodily harm, including a small knife, may be considered "deadly force." *State v. Brown*, 5th Dist. Stark No. 2018CA107, 2019-Ohio-2187.



If there is a factual question about whether the force used was deadly or non-deadly, the court should give the full instruction on deadly force contained in OJI-CR 421.21 as well as non-deadly force. *See State v. Triplett*, 8th Dist. Cuyahoga No. 97522, 2012-Ohio-3804.

4. PROXIMATE CAUSE. OJI-CR 417.23.
5. DEADLY FORCE (ADDITIONAL). OJI-CR 421.21.

#### COMMENT

Drawn from R.C. 2901.01; *State v. Dale*, 2d Dist. Champaign No. 2012 CA 20, 2013-Ohio-2229. “Deadly force” is based on the type or degree of force used, not the result of the force.

If there is a factual question about whether the force used was deadly or non-deadly, the court should give the full instruction on deadly force contained in OJI-CR 421.21 as well as non-deadly force. *See State v. Triplett*, 8th Dist. Cuyahoga No. 97522, 2012-Ohio-3804.

6. AT FAULT. The defendant did not act in (self-defense) (defense of his/her residence) if the state proved beyond a reasonable doubt that the defendant was at fault in creating the (situation) (incident) (argument) that resulted in the injury. The defendant was at fault if the defendant was the initial aggressor and

(Use appropriate alternative[s])

- (A) (insert name of victim[s]) did not escalate the (situation) (incident) (argument) by being the first to use or attempt to use (non-deadly force) (deadly force);

#### COMMENT

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Galluzzo*, 2d Dist. Champaign No. 99CA25 (Mar. 30, 2001).

(or)

- (B) provoked (insert name of victim[s]) into using force;

#### COMMENT

Drawn from *State v. Gillespie*, 172 Ohio App.3d 304, 2007-Ohio-3439 (2d Dist.).

(or)

- (C) did not withdraw from the (situation) (incident) (argument);

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

(or)

(D) withdrew from the (situation) (incident) (argument) but did not (inform [insert name of victim(s)]) (reasonably indicate by words or acts to [insert name of victim(s)]) of his/her withdrawal.

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

Self-defense or defense of his/her residence is not precluded because the defendant was engaged in criminal activity when he/she was attacked. *State v. Stevenson*, 10th Dist. Franklin No. 17AP-512, 2018-Ohio-5140; *State v. Turner*, 171 Ohio App.3d 82, 2007-Ohio-1346 (2d Dist.).

7. **TEST FOR REASONABLE GROUNDS AND HONEST BELIEF.** In deciding whether the defendant had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of bodily harm, you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (insert name of victim[s]) and decide whether his/her/their acts and words caused the defendant to reasonably and honestly believe that the defendant was about to receive bodily harm.

**COMMENT**

Drawn from *State v. Koss*, 49 Ohio St.3d 213 (1990).

8. **DETERMINING REASONABLE BELIEF (ADDITIONAL).** In determining whether the defendant, in using force in (self-defense) (defense of his/her residence), reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety, you may not consider the possibility of retreat by the defendant.

**COMMENT**

Drawn from R.C. 2901.09(C).

9. **SUBSTANTIAL RISK.** "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.



**COMMENT**

Drawn from R.C. 2901.01.

10. **WORDS (ADDITIONAL).** Words alone do not justify the use of force. Resort to force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

**COMMENT**

Drawn from *State v. Shane*, 63 Ohio St.3d 630 (1992); *State v. Howard*, 10th Dist. Franklin No. 16AP-226, 2017-Ohio-8742.

11. **UNREASONABLE FORCE (ADDITIONAL).** A person is allowed to use force that is reasonably necessary under the circumstances to protect (himself/herself) (his/her residence) from an apparent danger. For you to find the defendant guilty, the state must prove beyond a reasonable doubt that the defendant used more force than reasonably necessary and that the force used was greatly disproportionate to the apparent danger.

**COMMENT**

Drawn from *State v. Roddy*, 10th Dist. Franklin No. 81AP-499 (Nov. 17, 1981); *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Dull*, 3d Dist. Seneca No. 13-12-33, 2013-Ohio-1395; *State v. Gray*, 2d Dist. Montgomery No. 26473, 2016-Ohio-5869.

12. **GREATLY DISPROPORTIONATE (ADDITIONAL).** In deciding whether the force used was greatly disproportionate to the apparent danger, you may consider whether the force used shows revenge or a criminal purpose.

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Waller*, 4th Dist. Scioto No. 15CA3683-15CA3684, 2016-Ohio-3077.

This instruction should be given only if the instruction on unreasonable force is given to the jury.

13. **RESIDENCE.** “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

**COMMENT**

R.C. 2901.05(D)(3).

14. **DWELLING.** “Dwelling” means a (building) (*specify conveyance of any kind*) that has a roof over it and that is designed to be occupied by people lodging in the (building) (*specify conveyance*) at night, regardless of whether the (building) (*specify conveyance*) is temporary or permanent or is mobile or immobile. (A [building] [*specify conveyance*] includes, but is not limited to, an attached porch, and a [building] [*specify conveyance*] with a roof over it includes, but is not limited to, a tent.)

**COMMENT**

Drawn from R.C. 2901.05(D)(2).

15. **IMMEDIATE FAMILY.** “Immediate family” means a person’s spouse, parents, brothers and sisters of the whole or the half blood, and children, including adopted children.

**COMMENT**

Drawn from R.C. 2905.21, R.C. 2930.01.

16. **BATTERED PERSON SYNDROME (ADDITIONAL).** OJI-CR 417.43; R.C. 2901.06.

**COMMENT**

There is no duty to retreat from one’s own home before resorting to force in self-defense against a cohabitant with an equal right to be in the home. *See State v. Thomas*, 77 Ohio St.3d 323 (1997).

17. **CONCLUSION.** If you find that the state proved beyond a reasonable doubt all of the elements of (*insert name of applicable offense[s]*) and that the state proved beyond a reasonable doubt that the defendant did not act in (self-defense) (defense of his/her residence), you must find the defendant guilty.

If you find that the state failed to prove beyond a reasonable doubt any of the elements of (*insert name of applicable offense[s]*) or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in (self-defense) (defense of his/her residence), you must find the defendant not guilty.



**CR 421.191 Defense of another—use of non-deadly force R.C. 2901.05**  
**(effective 4/6/21) [Rev. 12/4/21]**

**COMMENT**

Effective 4/6/21, the General Assembly, in R.C. 2901.09, abolished the duty to retreat for any person who was in a place where he/she lawfully had a right to be when he/she used force in self-defense, defense of another, or defense of his/her residence. Because the General Assembly did not explicitly state whether R.C. 2901.09 applies to offenses that were committed before and tried after 4/6/21, the court must decide as a threshold matter whether amended R.C. 2901.09 applies as of the date of the trial or the date of the offense. Because the language in R.C. 2901.09(C) states what a trier of fact shall not consider, the Committee believes this amendment is applicable to all instructions given on and after 4/6/21.

Effective 3/28/19, R.C. 2901.05 shifted the burden of proof from a defendant having to prove self-defense, defense of another, or defense of a residence by a preponderance of the evidence to the state having to disprove at least one of the elements of self-defense, defense of another, or defense of a residence beyond a reasonable doubt. Under the amended statute, the defendant retains the burden of production, which is the burden of producing evidence “that tends to support” that the defendant used the force in self-defense, defense of another, or defense of a residence. *State v. Carney*, 10th Dist. Franklin No. 19AP-402, 2020-Ohio-2691; *State v. Petway*, 11th Dist. Lake No. 2019-L-124, 2020-Ohio-3848.

Because the General Assembly did not express a clear intent whether R.C. 2901.05 applies to offenses that were committed before and tried after 3/28/19, the court must decide as a threshold matter whether the amended R.C. 2901.05 applies as of the date of the trial or the date of the offense.

The trial court should check its specific appellate district. In *State v. Lewis*, 12th Dist. Butler No. CA2019-07-128, 2020-Ohio-3762, citing *State v. Humphries*, 51 Ohio St.2d 95 (1977), paragraph four of the syllabus and *State v. Gloff*, 12th Dist. Clermont No. CA2019-06-047, 2020-Ohio-3143, the Twelfth District Court of Appeals determined the burden-shifting change made through the amendment to R.C. 2901.05 applies to every criminal trial held on and after 3/28/19, regardless of when the offense(s) may have occurred. In *State v. Brooks*, 5th Dist. Richland No. 2019 CA 0104, 2020-Ohio-4123, however, the Fifth District Court of Appeals decided that the amended statute applies according to the date of the offense, not the date of trial. *See also State v. Williams*, 3d Dist. Allen No. 1-19-39, 2019-Ohio-5381; *State v. Brown*, 9th Dist. Wayne No. 19AP0004, 2020-Ohio-529. In *State v. Irvin*, 2d Dist. Montgomery No. 28495, 2020-Ohio-4847, the court decided that the changes to the burden of proof were not applicable to offenses that occurred before 3/28/2019 and certified a conflict with *Gloff* to the Supreme Court.

A trial court is not required to instruct the jury on self-defense in every situation in which the presentation is attempted; rather, a court need only instruct the jury on self-defense if sufficient evidence is introduced that, if believed, would raise a question in the minds of reasonable jurors concerning the existence of such issue. *See State v. Hatfield*, 9th Dist. Summit No. 23716, 2008-Ohio-2431; *State v. Bitting*,

9th Dist. Summit No. 29238, 2019-Ohio-2304, *appeal not allowed*, 157 Ohio St.3d 1407, 2019-Ohio-3731.

A trial court may not refuse a requested instruction if it is a “correct, pertinent statement of the law” and “appropriate to the facts.” *Smith v. Lessin*, 67 Ohio St.3d 487 (1993). It is within the sound discretion of the trial court to determine whether the evidence is sufficient to require a jury instruction. *State v. Mitts*, 81 Ohio St.3d 223, 1998-Ohio-635; *see also State v. Wolons*, 44 Ohio St.3d 64 (1989). The trial court cannot give a jury instruction on the affirmative defense of self-defense if there is insufficient evidence. *See Stateten v. Schwendeman*, 4th Dist. Athens No. 17CA7, 2018-Ohio-240. In deciding whether the evidence was sufficient, the trial court neither resolves evidentiary conflicts nor assesses the credibility of witnesses, as both are functions reserved for the trier of fact. *State v. Jones*, 1st Dist. Hamilton Nos. C-120570 and C-120571, 2013-Ohio-4775, citing *State v. Williams*, 197 Ohio App.3d 505, 2011-Ohio-6267 (1st Dist.). *See also State v. Berry*, 3d Dist. Defiance No. 4-12-03, 2013-Ohio-2380 (“Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence.”).

The Fourth District held that the phrase “tends to support” as used in R.C. 2901.05(B)(1) does not create a new standard for determining whether a defendant is entitled to a self-defense instruction. *State v. Tolle*, 4th Dist. Adams No. 19CA1095, 2020-Ohio-935. The evidence must be sufficient to raise a question in the mind of a reasonable juror, as is already required under the existing standard. *State v. Melchior*, 56 Ohio St.2d 15 (1978). The Eleventh District held that in order for evidence to “tend to support” that force was used in self-defense, it must “serve, contribute, or conduce in some degree or way” to support that the force was used in self-defense. *State v. Petway*, *supra*. *See also State v. Parrish*, 1st Dist. Hamilton No. C-190379, 2020-Ohio-4807.

If there is a factual question about whether the force used was deadly or non-deadly, the court should give the full instruction on deadly force contained in OJI-CR 421.21 as well as non-deadly force. *See State v. Triplett*, 8th Dist. Cuyahoga No. 97522, 2012-Ohio-3804.

1. GENERAL. A person is allowed to use non-deadly force in defense of another. The state must prove beyond a reasonable doubt that the defendant, when using non-deadly force, did not act in defense of another.
2. STATE’S PROOF. To prove that the defendant’s use of non-deadly force was not in defense of another, the state must prove beyond a reasonable doubt at least one of the following:

(A) (*insert name of person defended*) was at fault in creating the situation giving rise to (*describe the event in which the use of non-deadly force occurred*); or

(B) the defendant did not have reasonable grounds to believe that (*insert name of person defended*) was in (imminent) (immediate) danger of bodily harm; or

(C) the defendant did not have an honest belief, even if mistaken, that (*insert name of person defended*) was in (imminent) (immediate) danger of bodily harm; or

(D) the defendant used unreasonable force.



**COMMENT**

Drawn from *State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Wenger*, 58 Ohio St.2d 336 (1979); *State v. Marsh*, 71 Ohio App.3d 64 (11th Dist. 1990).

The defendant is presumed to have acted in defense of another when the person defended was in the defendant's residence or vehicle. *See* OJI-CR 421.23; R.C. 2901.05(B)(2).

A defendant may be entitled to a defense-of-another instruction even if the person being defended is unaware of the danger or necessity for using force. *See State v. Harris*, 129 Ohio App.3d 527 (10th Dist. 1998).

The right to defend another does not depend upon a family relationship, *State v. Wenger*, 58 Ohio St.2d 336 (1979), and a family relationship between the defendant and the person defended (such as son and father) does not give the defendant any greater right to use force. *See Sharp v. State*, 19 Ohio 379 (1850).

3. NON-DEADLY FORCE. OJI-CR 421.19 § 3.

4. PROXIMATE CAUSE. OJI-CR 417.23.

5. DEADLY FORCE (ADDITIONAL). OJI-CR 421.19 § 5.

6. AT FAULT. The defendant stands in the shoes of the person he/she defended. The defendant did not act in defense of another if the state proved beyond a reasonable doubt that (*insert name of person defended*) was the one at fault in creating the (situation) (incident) (argument) that resulted in the injury. (*Insert name of person defended*) was at fault if he/she was the initial aggressor and

**COMMENT**

Drawn from *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525.

(Use appropriate alternative[s])

(A) (*insert name of victim[s]*) did not escalate the (situation) (incident) (argument) by being the first to use or attempt to use (non-deadly force) (deadly force);

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Galluzzo*, 2d Dist. Champaign No. 99CA25 (Mar. 30, 2001).

(or)

(B) (*insert name of person defended*) provoked (*insert name of victim[s]*) into using force;

**COMMENT**

Drawn from *State v. Gillespie*, 172 Ohio App.3d 304, 2007-Ohio-3439 (2d Dist.).

(or)

(C) (*insert name of person defended*) did not withdraw from the (situation) (incident) (argument);

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

(or)

(D) (*insert name of person defended*) withdrew from the (situation) (incident) (argument) but did not (inform [*insert name of victim(s)*]) (reasonably indicate by words or acts to [*insert name of victim(s)*]) of his/her withdrawal.

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

7. **TEST FOR REASONABLE GROUNDS AND HONEST BELIEF.** In deciding whether the defendant had reasonable grounds to believe and an honest belief that (*insert name of person defended*) was in (imminent) (immediate) danger of bodily harm, you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim[s]*) and decide whether his/her/their acts and words caused the defendant to reasonably and honestly believe that (*insert name of person defended*) was about to receive bodily harm.

**COMMENT**

Drawn from *State v. Koss*, 49 Ohio St.3d 213 (1990).

8. **DETERMINING REASONABLE BELIEF (ADDITIONAL).** In determining whether the defendant, in using force in defense of another, reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety, you may not consider the possibility of retreat by (*insert name of person defended*).



**COMMENT**

Drawn from R.C. 2901.09(C).

9. **SUBSTANTIAL RISK.** “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

10. **WORDS (ADDITIONAL).** Words alone do not justify the use of force. Resort to force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

**COMMENT**

Drawn from *State v. Shane*, 63 Ohio St.3d 630 (1992); *State v. Howard*, 10th Dist. Franklin No. 16AP-226, 2017-Ohio-8742.

11. **UNREASONABLE FORCE (ADDITIONAL).** A person is allowed to use force that is reasonably necessary under the circumstances to protect another from an apparent danger. For you to find the defendant guilty, the state must prove beyond a reasonable doubt that the defendant used more force than reasonably necessary and that the force used was greatly disproportionate to the apparent danger.

**COMMENT**

Drawn from *State v. Roddy*, 10th Dist. Franklin No. 81AP-499 (Nov. 17, 1981); *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Dull*, 3d Dist. Seneca No. 13-12-33, 2013-Ohio-1395; *State v. Gray*, 2d Dist. Montgomery No. 26473, 2016-Ohio-5869.

12. **GREATLY DISPROPORTIONATE (ADDITIONAL).** In deciding whether the force used was greatly disproportionate to the apparent danger, you may consider whether the force used shows revenge or a criminal purpose.

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-

4416; *State v. Waller*, 4th Dist. Scioto No. 15CA3683-15CA3684, 2016-Ohio-3077.

This instruction should be given only if the instruction on unreasonable force is given to the jury.

13. **BATTERED PERSON SYNDROME (ADDITIONAL).** OJI-CR 417.43; R.C. 2901.06.

#### COMMENT

There is no duty to retreat from the home of the person defended before resorting to force in defense of that person against a cohabitant with an equal right to be in the home. *See State v. Thomas*, 77 Ohio St.3d 323 (1997).

14. **CONCLUSION.** If you find that the state proved beyond a reasonable doubt all of the elements of (*insert name of applicable offense[s]*) and that the state proved beyond a reasonable doubt that the defendant did not act in defense of another, you must find the defendant guilty.

If you find that the state failed to prove beyond a reasonable doubt any of the elements of (*insert name of applicable offense[s]*), or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in defense of another, you must find the defendant not guilty.

#### **CR 421.21 Self-defense against danger of bodily harm [Rev. 9/12/20]**

1. **GENERAL.** OJI-CR 417.27.

2. **SELF-DEFENSE.** The defendant claims to have acted in self-defense. To establish that he/she was justified in using force not likely to cause death or great bodily harm, the defendant must prove by the greater weight of the evidence that:

(A) he/she was not at fault in creating the situation giving rise to (*describe the event in which the use of non-deadly force occurred*); and

(B) he/she had reasonable grounds to believe and an honest belief, even if mistaken, that he/she was in (imminent) (immediate) danger of bodily harm.

#### COMMENT

When less than deadly force is used, the defendant has no duty to retreat. *State v. Perez*, 72 Ohio App.3d 468 (1991); *State v. Fox*, 36 Ohio App.3d 78 (1987); *Columbus v. Dawson*, 33 Ohio App.3d 141 (1986). If there is an issue whether deadly force was used, the court must instruct about the duty to retreat.

*State v. Jackson*, 22 Ohio St.3d 281 (1986); *State v. Robbins*, 58 Ohio St.2d 74 (1979), citing *State v. Melchior*, 56 Ohio St.2d 15 (1978). If either of the first two elements is not proved, the defendant had a duty to retreat. *See* OJI-CR 421.19 § 3.

A defendant asserting self-defense cannot introduce evidence of specific in-



stances of a victim's conduct to prove that the victim was the initial aggressor. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68.

3. DEFENSE OF ANOTHER. The defendant claims to have acted in defense of (*insert name of person defended*). The defendant had no greater rights than (*insert name of person defended*) and was justified in using force not likely to cause death or great bodily harm only if

(A) (*insert name of person defended*) was not at fault in creating the situation giving rise to (*describe the event in which the use of non-deadly force occurred*); and

(B) the defendant had reasonable grounds to believe and an honest belief, even if mistaken, that (*insert name of person defended*) was in (imminent) (immediate) danger of bodily harm.

#### COMMENT

Drawn from *State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Wenger*, 58 Ohio St.2d 336 (1979); and *State v. Marsh*, 71 Ohio App.3d 64 (1990).

The Committee believes that consideration of the right to use force of both the defendant and the person defended is necessary. See *State v. Smith*, 4th Dist. Washington No. 02CA75, 2003-Ohio-1712.

A defendant may be entitled to a defense-of-another instruction even if the person being defended is unaware of the danger or necessity for using force. *State v. Harris*, 129 Ohio App.3d 527 (1998). The person defended need not testify as to his/her knowledge concerning the danger or the need for the use of force if the defendant presents evidence supporting the elements of the defense. *Id.*

The right to defend another does not depend upon a family relationship. *State v. Wenger, supra*, and a family relationship between the defendant and the person defended (such as, son and father) does not give the defendant any greater right to use force. *Sharp v. State*, 19 Ohio 379 (1850).

4. WORDS (ADDITIONAL). Words alone do not justify the use of force. Resort to force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

#### COMMENT

*State v. Shane*, 63 Ohio St.3d. 630 (1992); *State v. Howard*, 10th Dist. Franklin No. 16AP-226, 2017-Ohio-8742.

5. TEST FOR REASONABLENESS.

(A) SELF DEFENSE. In deciding whether the defendant had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of

bodily harm, you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim*) and decide whether his/her acts and words caused the defendant reasonably and honestly to believe that he/she was about to be killed or receive bodily harm.

#### COMMENT

Drawn from *State v. Koss*, 49 Ohio St.3d 213 (1990).

(B) **DEFENSE OF ANOTHER.** In deciding whether the defendant had reasonable grounds to believe and an honest belief that (*name of person defended*) was in (imminent) (immediate) danger of bodily harm, you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim*) and decide whether his/her acts and words caused the defendant reasonably and honestly to believe that (*insert name of person defended*) was about to be killed or receive bodily harm.

**CR 421.21 Self-defense, defense of residence—use of deadly force R.C. 2901.05 (effective 4/6/21) [Rev. 12/4/21]**

#### COMMENT

Effective 4/6/21, the General Assembly, in R.C. 2901.09, abolished the duty to retreat for any person who was in a place where he/she lawfully had a right to be when he/she used force in self-defense, defense of another, or defense of his/her residence. Because the General Assembly did not explicitly state whether R.C. 2901.09 applies to offenses that were committed before and tried after 4/6/21, the court must decide as a threshold matter whether amended R.C. 2901.09 applies as of the date of the trial or the date of the offense. Because the language in R.C. 2901.09(C) states what a trier of fact shall not consider, the Committee believes this amendment is applicable to all instructions given on and after 4/6/21.

Effective 3/28/19, R.C. 2901.05 shifted the burden of proof from a defendant having to prove self-defense, defense of another, or defense of a residence by a preponderance of the evidence to the state having to disprove at least one of the elements of self-defense, defense of another, or defense of a residence beyond a reasonable doubt. Under the amended statute, the defendant retains the burden of production, which is the burden of producing evidence “that tends to support” that the defendant used the force in self-defense, defense of another, or defense of a residence. *State v. Carney*, 10th Dist. Franklin No. 19AP-402, 2020-Ohio-2691; *State v. Petway*, 11th Dist. Lake No. 2019-L-124, 2020-Ohio-3848.

Because the General Assembly did not express a clear intent whether R.C. 2901.05 applies to offenses that were committed before and tried after 3/28/19, the



court must decide as a threshold matter whether the amended R.C. 2901.05 applies as of the date of the trial or the date of the offense.

The trial court should check its specific appellate district. In *State v. Lewis*, 12th Dist. Butler No. CA2019-07-128, 2020-Ohio-3762, citing *State v. Humphries*, 51 Ohio St.2d 95 (1977), paragraph four of the syllabus and *State v. Gloff*, 12th Dist. Clermont No. CA2019-06-047, 2020-Ohio-3143, the Twelfth District Court of Appeals determined the burden-shifting change made through the amendment to R.C. 2901.05 applies to every criminal trial held on and after 3/28/19, regardless of when the offense(s) may have occurred. In *State v. Brooks*, 5th Dist. Richland No. 2019 CA 0104, 2020-Ohio-4123, however, the Fifth District Court of Appeals decided that the amended statute applies according to the date of the offense, not the date of trial. See also *State v. Williams*, 3d Dist. Allen No. 1-19-39, 2019-Ohio-5381; *State v. Brown*, 9th Dist. Wayne No. 19AP0004, 2020-Ohio-529. In *State v. Irvin*, 2d Dist. Montgomery No. 28495, 2020-Ohio-4847, the court decided that the changes to the burden of proof were not applicable to offenses that occurred before 3/28/2019 and certified a conflict with *Gloff* to the Supreme Court.

A trial court is not required to instruct the jury on self-defense in every situation in which the presentation is attempted; rather, a court need only instruct the jury on self-defense if sufficient evidence is introduced that, if believed, would raise a question in the minds of reasonable jurors concerning the existence of such issue. See *State v. Hatfield*, 9th Dist. Summit No. 23716, 2008-Ohio-2431; *State v. Bitting*, 9th Dist. Summit No. 29238, 2019-Ohio-2304, *appeal not allowed*, 157 Ohio St.3d 1407, 2019-Ohio-3731.

A trial court may not refuse a requested instruction if it is a “correct, pertinent statement of the law” and “appropriate to the facts.” *Smith v. Lessin*, 67 Ohio St.3d 487 (1993). It is within the sound discretion of the trial court to determine whether the evidence is sufficient to require a jury instruction. *State v. Mitts*, 81 Ohio St.3d 223, 1998-Ohio-635; see also *State v. Wolons*, 44 Ohio St.3d 64 (1989). The trial court cannot give a jury instruction on the affirmative defense of self-defense if there is insufficient evidence. See *Stateten v. Schwendeman*, 4th Dist. Athens No. 17CA7, 2018-Ohio-240. In deciding whether the evidence was sufficient, the trial court neither resolves evidentiary conflicts nor assesses the credibility of witnesses, as both are functions reserved for the trier of fact. *State v. Jones*, 1st Dist. Hamilton Nos. C-120570 and C-120571, 2013-Ohio-4775, citing *State v. Williams*, 197 Ohio App.3d 505, 2011-Ohio-6267 (1st Dist.). See also *State v. Berry*, 3d Dist. Defiance No. 4-12-03, 2013-Ohio-2380 (“Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence.”).

The Fourth District held that the phrase “tends to support” as used in R.C. 2901.05(B)(1) does not create a new standard for determining whether a defendant is entitled to a self-defense instruction. *State v. Tolle*, 4th Dist. Adams No. 19CA1095, 2020-Ohio-935. The evidence must be sufficient to raise a question in the mind of a reasonable juror, as is already required under the existing standard. *State v. Melchior*, 56 Ohio St.2d 15 (1978). The Eleventh District held that in order for evidence to “tend to support” that force was used in self-defense, it must “serve, contribute, or conduce in some degree or way” to support that the force was used in self-defense. *State v. Petway*, *supra*. See also *State v. Parrish*, 1st Dist. Hamilton No. C-190379, 2020-Ohio-4807.

If there is a factual question about whether the force used was deadly or non-deadly, the court should give the full instruction on deadly force contained in OJI-CR 421.21 as well as non-deadly force. *See State v. Triplett*, 8th Dist. Cuyahoga No. 97522, 2012-Ohio-3804.

1. **GENERAL.** A person is allowed to use deadly force in (self-defense) (defense of his/her residence). The state must prove beyond a reasonable doubt that the defendant, when using deadly force, did not act in (self-defense) (defense of his/her residence).

2. **STATE'S PROOF.** To prove that the defendant's use of deadly force was not in (self-defense) (defense of his/her residence), the state must prove beyond a reasonable doubt at least one of the following:

(A) the defendant was at fault in creating the situation giving rise to (*describe the event in which the use of deadly force occurred*); or

(B) the defendant did not have reasonable grounds to believe that he/she was in (imminent) (immediate) danger of death or great bodily harm; or

(C) the defendant did not have an honest belief, even if mistaken, that he/she was in (imminent) (immediate) danger of death or great bodily harm; or

(D) the defendant violated a duty to retreat to avoid the danger; or

(E) the defendant used unreasonable force.

#### COMMENT

The defendant is presumed to have acted in self-defense when in his/her residence or vehicle. *See OJI-CR 421.23; R.C. 2901.05(B)(2).*

The statute does not define self-defense, and therefore the Committee believes that the common-law elements of self-defense are applicable. *See State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Jackson*, 22 Ohio St.3d 281 (1986); *State v. Robbins*, 58 Ohio St.2d 74 (1979), citing *State v. Melchior*, 56 Ohio St.2d 15 (1978); *State v. Gray*, 2d Dist. Montgomery No. 26473, 2016-Ohio-5869.

If self-defense is an issue, the defendant may not introduce evidence of prior instances of a victim's conduct to prove that the victim was the initial aggressor. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68; *see also State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426. The Committee believes that evidence of prior instances of a victim's conduct is admissible for other purposes, such as the defendant's reasonable belief in acting in self-defense. For example, see "Battered Person" at OJI-CR 417.43 and Evid.R. 404(B).

3. **DEADLY FORCE.** OJI-CR 421.19 § 5.

4. **PROXIMATE CAUSE.** OJI-CR 417.23.

5. **NON-DEADLY FORCE (ADDITIONAL).** OJI-CR 421.19 § 3.

6. **AT FAULT.** The defendant did not act in (self-defense) (defense of his/her



residence) if the state proved beyond a reasonable doubt that the defendant was at fault in creating the (situation) (incident) (argument) that resulted in the (injury) (death). The defendant was at fault if the defendant was the initial aggressor and

(Use appropriate alternative[s])

(A) (insert name of victim[s]) did not escalate the (situation) (incident) (argument) by being the first to use or attempt to use (non-deadly force) (deadly force);

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Galluzzo*, 2d Dist. Champaign No. 99CA25 (Mar. 30, 2001).

(or)

(B) the defendant provoked (insert name of victim[s]) into using force;

**COMMENT**

Drawn from *State v. Gillespie*, 172 Ohio App.3d 304, 2007-Ohio-3439 (2d Dist.).

(or)

(C) the defendant did not withdraw from the (situation) (incident) (argument);

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

(or)

(D) the defendant withdrew from the (situation) (incident) (argument) but did not (inform [insert name of victim(s)]) (reasonably indicate by words or acts to [insert name of victim[s]) of his/her withdrawal.

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

Self-defense or defense of his/her residence is not precluded because the defendant was engaged in criminal activity when he/she was attacked. See *State v. Stevenson*, 10th Dist. Franklin No. 17AP-512, 2018-Ohio-5140; *State v. Turner*, 171 Ohio App.3d 82, 2007-Ohio-1346 (2d Dist.).

**7. TEST FOR REASONABLE GROUNDS AND HONEST BELIEF.** In deciding

whether the defendant had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of (death) (great bodily harm), you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim[s]*) and decide whether his/her/their acts and words caused the defendant to reasonably and honestly believe that the defendant was about to (be killed) (receive great bodily harm).

**COMMENT**

Drawn from *State v. Koss*, 49 Ohio St.3d 213 (1990).

8. **DETERMINING REASONABLE BELIEF (ADDITIONAL).** In determining whether the defendant, in using force in (self-defense) (defense of his/her residence), reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety, you may not consider the possibility of retreat by the defendant.

**COMMENT**

Drawn from R.C. 2901.09(C).

9. **NO DUTY TO RETREAT (ADDITIONAL).** The defendant had no duty to retreat before using force in (self-defense) (defense of his/her residence) if the defendant was in a place in which he/she lawfully had a right to be.

**COMMENT**

Drawn from R.C. 2901.09(B).

10. **LAWFULLY HAD A RIGHT TO BE.** “Lawfully had a right to be” means that the defendant was not trespassing when he/she used force in (self-defense) (defense of his/her residence).

**COMMENT**

If there is an issue of fact as to whether the defendant was trespassing, the court must instruct on the elements of trespass. *See* OJI-CR 511.21.

11. **SUBSTANTIAL RISK.** “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.



**COMMENT**

Drawn from R.C. 2901.01.

12. **WORDS (ADDITIONAL).** Words alone do not justify the use of force. Resort to deadly force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

**COMMENT**

Drawn from *State v. Shane*, 63 Ohio St.3d. 630 (1992); *State v. Howard*, 10th Dist. Franklin No. 16AP-226, 2017-Ohio-8742.

13. **UNREASONABLE FORCE (ADDITIONAL).** A person is allowed to use force that is reasonably necessary under the circumstances to protect (himself/herself) (his/her residence) from an apparent danger. For you to find the defendant guilty, the state must prove beyond a reasonable doubt that the defendant used more force than reasonably necessary and that the force used was greatly disproportionate to the apparent danger.

**COMMENT**

Drawn from *State v. Roddy*, 10th Dist. Franklin No. 81AP-499 (Nov. 17, 1981); *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Dull*, 3d Dist. Seneca No. 13-12-33, 2013-Ohio-1395; *State v. Gray*, 2d Dist. Montgomery No. 26473, 2016-Ohio-5869.

14. **GREATLY DISPROPORTIONATE (ADDITIONAL).** In deciding whether the force used was greatly disproportionate to the apparent danger, you may consider whether the force used shows revenge or a criminal purpose.

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Waller*, 4th Dist. Scioto No. 15CA3683-15CA3684, 2016-Ohio-3077.

This instruction should be given only if the instruction on unreasonable force is given to the jury.

15. **RESIDENCE.** "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

**COMMENT**

R.C. 2901.05(D)(3).

16. **DWELLING.** “Dwelling” means a (building) (*specify conveyance of any kind*) that has a roof over it and that is designed to be occupied by people lodging in the (building) (*specify conveyance*) at night, regardless of whether the (building) (*specify conveyance*) is temporary or permanent or is mobile or immobile. (A [building] [*specify conveyance*] includes, but is not limited to, an attached porch, and a [building] [*specify conveyance*] with a roof over it includes, but is not limited to, a tent.)

**COMMENT**

Drawn from R.C. 2901.05(D)(2).

17. **IMMEDIATE FAMILY.** “Immediate family” means a person’s spouse, parents, brothers and sisters of the whole or the half blood, and children, including adopted children.

**COMMENT**

Drawn from R.C. 2905.21, R.C. 2930.01.

18. **BATTERED PERSON SYNDROME (ADDITIONAL).** OJI-CR 417.43; R.C. 2901.06.

**COMMENT**

There is no duty to retreat from one’s own home before resorting to deadly force in self-defense against a cohabitant with an equal right to be in the home. *See State v. Thomas*, 77 Ohio St.3d 323 (1997).

19. **CONCLUSION.** If you find that the state proved beyond a reasonable doubt all of the elements of (*insert name of applicable offense[s]*) and that the state proved beyond a reasonable doubt that the defendant did not act in (self-defense) (defense of his/her residence), you must find the defendant guilty.

If you find that the state failed to prove beyond a reasonable doubt any of the elements of (*insert name of applicable offense[s]*) or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in (self-defense) (defense of his/her residence), you must find the defendant not guilty.



**CR 421.211 Defense of another against danger of death or great bodily harm—use of deadly force R.C. 2901.05 (effective 3/28/19) [Rev. 12/4/21]**

**COMMENT**

Effective 4/6/21, the General Assembly, in R.C. 2901.09, abolished the duty to retreat for any person who was in a place where he/she lawfully had a right to be when he/she used force in self-defense, defense of another, or defense of his/her residence. Because the General Assembly did not explicitly state whether R.C. 2901.09 applies to offenses that were committed before and tried after 4/6/21, the court must decide as a threshold matter whether amended R.C. 2901.09 applies as of the date of the trial or the date of the offense. Because the language in R.C. 2901.09(C) states what a trier of fact shall not consider, the Committee believes this amendment is applicable to all instructions given on and after 4/6/21.

Effective 3/28/19, R.C. 2901.05 shifted the burden of proof from a defendant having to prove self-defense, defense of another, or defense of his/her residence by a preponderance of the evidence to the state having to disprove at least one of the elements of self-defense, defense of another, or defense of his/her residence beyond a reasonable doubt. Under the amended statute, the defendant retains the burden of production, which is the burden of producing evidence “that tends to support” that the defendant used the force in self-defense, defense of another, or defense of his/her residence. *State v. Carney*, 10th Dist. Franklin No. 19AP-402, 2020-Ohio-2691; *State v. Petway*, 11th Dist. Lake No. 2019-L-124, 2020-Ohio-3848.

Because the General Assembly did not express a clear intent whether R.C. 2901.05 applies to offenses that were committed before and tried after 3/28/19, the court must decide as a threshold matter whether the amended R.C. 2901.05 applies as of the date of the trial or the date of the offense.

The trial court should check its specific appellate district. In *State v. Lewis*, 12th Dist. Butler No. CA2019-07-128, 2020-Ohio-3762, citing *State v. Humphries*, 51 Ohio St.2d 95 (1977), paragraph four of the syllabus and *State v. Gloff*, 12th Dist. Clermont No. CA2019-06-047, 2020-Ohio-3143, the Twelfth District Court of Appeals determined the burden-shifting change made through the amendment to R.C. 2901.05 applies to every criminal trial held on and after 3/28/19, regardless of when the offense(s) may have occurred. In *State v. Brooks*, 5th Dist. Richland No. 2019 CA 0104, 2020-Ohio-4123, however, the Fifth District Court of Appeals decided that the amended statute applies according to the date of the offense, not the date of trial. See also *State v. Williams*, 3d Dist. Allen No. 1-19-39, 2019-Ohio-5381; *State v. Brown*, 9th Dist. Wayne No. 19AP0004, 2020-Ohio-529. In *State v. Irvin*, 2d Dist. Montgomery No. 28495, 2020-Ohio-4847, the court decided that the changes to the burden of proof were not applicable to offenses that occurred before 3/28/19 and certified a conflict with *Gloff* to the Supreme Court.

A trial court is not required to instruct the jury on self-defense in every situation in which the presentation is attempted; rather, a court need only instruct the jury on self-defense if sufficient evidence is introduced that, if believed, would raise a question in the minds of reasonable jurors concerning the existence of such issue.

See *State v. Hatfield*, 9th Dist. Summit No. 23716, 2008-Ohio-2431; *State v. Bitting*, 9th Dist. Summit No. 29238, 2019-Ohio-2304, *appeal not allowed*, 157 Ohio St.3d 1407, 2019-Ohio-3731.

A trial court may not refuse a requested instruction if it is a “correct, pertinent statement of the law” and “appropriate to the facts.” *Smith v. Lessin*, 67 Ohio St.3d 487 (1993). It is within the sound discretion of the trial court to determine whether the evidence is sufficient to require a jury instruction. *State v. Mitts*, 81 Ohio St.3d 223, 1998-Ohio-635; *see also State v. Wolons*, 44 Ohio St.3d 64 (1989). The trial court cannot give a jury instruction on the affirmative defense of self-defense if there is insufficient evidence. *See Stateten v. Schwendeman*, 4th Dist. Athens No. 17CA7, 2018-Ohio-240. In deciding whether the evidence was sufficient, the trial court neither resolves evidentiary conflicts nor assesses the credibility of witnesses, as both are functions reserved for the trier of fact. *State v. Jones*, 1st Dist. Hamilton Nos. C-120570 and C-120571, 2013-Ohio-4775, citing *State v. Williams*, 197 Ohio App.3d 505, 2011-Ohio-6267 (1st Dist.). *See also State v. Berry*, 3d Dist. Defiance No. 4-12-03, 2013-Ohio-2380 (“Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence.”).

The Fourth District held that the phrase “tends to support” as used in R.C. 2901.05(B)(1) does not create a new standard for determining whether a defendant is entitled to a self-defense instruction. *State v. Tolle*, 4th Dist. Adams No. 19CA1095, 2020-Ohio-935. The evidence must be sufficient to raise a question in the mind of a reasonable juror, as is already required under the existing standard. *State v. Melchior*, 56 Ohio St.2d 15 (1978). The Eleventh District held that in order for evidence to “tend to support” that force was used in self-defense, it must “serve, contribute, or conduce in some degree or way” to support that the force was used in self-defense. *State v. Petway*, *supra*. *See also State v. Parrish*, 1st Dist. Hamilton No. C-190379, 2020-Ohio-4807.

If there is a factual question about whether the force used was deadly or non-deadly, the court should give the full instruction on deadly force contained in OJI-CR 421.21 as well as non-deadly force. *See State v. Triplett*, 8th Dist. Cuyahoga No. 97522, 2012-Ohio-3804.

1. GENERAL. A person is allowed to use deadly force in defense of another. The state must prove beyond a reasonable doubt that the defendant, when using deadly force, did not act in defense of another.

2. STATE’S PROOF. To prove that the defendant’s use of deadly force was not in defense of another, the state must prove beyond a reasonable doubt at least one of the following:

(A) (*insert name of person defended*) was at fault in creating the situation giving rise to (*describe the event in which the use of deadly force occurred*); or

(B) the defendant did not have reasonable grounds to believe that (*insert name of person defended*) was in (imminent) (immediate) danger of death or great bodily harm; or

(C) the defendant did not have an honest belief, even if mistaken, that (*insert name*



*of person defended*) was in (imminent) (immediate) danger of bodily harm; or  
(D) (*insert name of person defended*) violated a duty to retreat to avoid the danger;  
or  
(E) the defendant used unreasonable force.

**COMMENT**

Drawn from *State v. Williford*, 49 Ohio St.3d 247 (1990); *State v. Wenger*, 58 Ohio St.2d 336 (1979); *State v. Marsh*, 71 Ohio App.3d 64 (11th Dist. 1990).

The defendant is presumed to have acted in defense of another when the person defended was in the defendant's residence or vehicle. See OJI-CR 421.23; R.C. 2901.05(B)(2).

A defendant may be entitled to a defense-of-another instruction even if the person being defended is unaware of the danger or necessity for using force. See *State v. Harris*, 129 Ohio App.3d 527 (10th Dist. 1998).

The right to defend another does not depend upon a family relationship, *State v. Wenger*, 58 Ohio St.2d 336 (1979), and a family relationship between the defendant and the person defended (such as son and father) does not give the defendant any greater right to use force. *Sharp v. State*, 19 Ohio 379 (1850).

3. DEADLY FORCE. OJI-CR 421.19 § 5.
4. PROXIMATE CAUSE. OJI-CR 417.23.
5. NON-DEADLY FORCE (ADDITIONAL). OJI-CR 421.19 § 3.
6. AT FAULT. The defendant stands in the shoes of the person he/she defended. The defendant did not act in defense of another if the state proved beyond a reasonable doubt that (*insert name of person defended*) was the one at fault in creating the (situation) (incident) (argument) that resulted in the (injury) (death). (*Insert name of person defended*) was at fault if he/she was the initial aggressor and

**COMMENT**

Drawn from *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525.

(Use appropriate alternative[s])

(A) (*insert name of victim[s]*) did not escalate the (situation) (incident) (argument) by being the first to use or attempt to use (non-deadly) (deadly) force;

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-

4416; *State v. Galluzzo*, 2d Dist. Champaign No. 99CA25 (Mar. 30, 2001).

(or)

(B) (*insert name of person defended*) provoked (*insert name of victim[s]*) into using force;

**COMMENT**

Drawn from *State v. Gillespie*, 172 Ohio App.3d 304, 2007-Ohio-3439 (2d Dist.).

(or)

(C) (*insert name of person defended*) did not withdraw from the (situation) (incident) (argument);

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

(or)

(D) (*insert name of person defended*) withdrew from the (situation) (incident) (argument) but did not (inform [*insert name of victim(s)*]) (reasonably indicate by words or acts to [*insert name of victim(s)*]) of his/her withdrawal.

**COMMENT**

Drawn from *State v. Melchior*, 56 Ohio St.2d 15 (1978).

7. **TEST FOR REASONABLE GROUNDS AND HONEST BELIEF.** In deciding whether the defendant had reasonable grounds to believe and an honest belief that (*insert name of person defended*) was in (imminent) (immediate) danger of (death) (great bodily harm), you must put yourself in the position of the defendant, with his/her characteristics, his/her knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of (*insert name of victim[s]*) and decide whether his/her/their acts and words caused the defendant to reasonably and honestly believe that (*insert name of person defended*) was about to (be killed) (receive great bodily harm).

**COMMENT**

Drawn from *State v. Koss*, 49 Ohio St.3d 213 (1990).



8. DETERMINING REASONABLE BELIEF (ADDITIONAL). In determining whether the defendant, in using force in defense of another, reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety, you may not consider the possibility of retreat by *(insert name of person defended)*.

**COMMENT**

Drawn from R.C. 2901.09(C).

9. NO DUTY TO RETREAT (ADDITIONAL). *(Insert name of person defended)* had no duty to retreat if he/she was in a place in which he/she lawfully had a right to be.

**COMMENT**

Drawn from R.C. 2901.09(B).

10. LAWFULLY RIGHT TO BE. “Lawfully right to be” means that *(insert name of person defended)* was not trespassing when the defendant used deadly force in defense of *(insert name of person defended)*.

**COMMENT**

If there is an issue of fact as to whether the person defended was trespassing, the court must instruct on the elements of trespass. *See* OJI-CR 511.21.

11. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

12. WORDS (ADDITIONAL). Words alone do not justify the use of force. Resort to deadly force is not justified by abusive language, verbal threats, or other words, no matter how provocative.

**COMMENT**

Drawn from *State v. Shane*, 63 Ohio St.3d. 630 (1992); *State v. Howard*, 10th Dist. Franklin No. 16AP-226, 2017-Ohio-8742.

13. **UNREASONABLE FORCE (ADDITIONAL).** A person is allowed to use force that is reasonably necessary under the circumstances to protect another from an apparent danger. For you to find the defendant guilty, the state must prove beyond a reasonable doubt that the defendant used more force than reasonably necessary and that the force used was greatly disproportionate to the apparent danger.

**COMMENT**

Drawn from *State v. Roddy*, 10th Dist. Franklin No. 81AP-499 (Nov. 17, 1981); *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Dull*, 3d Dist. Seneca No. 13-12-33, 2013-Ohio-1395; *State v. Gray*, 2d Dist. Montgomery No. 26473, 2016-Ohio-5869.

14. **GREATLY DISPROPORTIONATE (ADDITIONAL).** In deciding whether the force used was greatly disproportionate to the apparent danger, you may consider whether the force used shows revenge or a criminal purpose.

**COMMENT**

Drawn from *State v. Hendrickson*, 4th Dist. Athens No. 08CA12, 2009-Ohio-4416; *State v. Waller*, 4th Dist. Scioto No. 15CA3683-15CA3684, 2016-Ohio-3077.

This instruction should be given only if the instruction on unreasonable force is given to the jury.

15. **BATTERED PERSON SYNDROME (ADDITIONAL).** OJI-CR 417.43; R.C. 2901.06.

**COMMENT**

There is no duty to retreat from the home of the person defended before resorting to force in defense of that person against a cohabitant with an equal right to be in the home. *See State v. Thomas*, 77 Ohio St.3d 323 (1997).

16. **CONCLUSION.** If you find that the state proved beyond a reasonable doubt all of the elements of (*insert name of applicable offense[s]*) and that the state proved beyond a reasonable doubt that the defendant did not act in defense of another, you must find the defendant guilty.

If you find that the state failed to prove beyond a reasonable doubt any of the elements of (*insert name of applicable offense[s]*) or if you find that the state failed to prove beyond a reasonable doubt that the defendant did not act in defense of another, you must find the defendant not guilty.



**CR 421.23 Presumption—self-defense, defense of another—when in a residence or vehicle, use of deadly force R.C. 2901.05 (offenses committed on and after 3/28/19) [Rev. 12/4/21]**

1. **PRESUMPTION—DESCRIBED.** The defendant is presumed to have acted in (self-defense) (defense of another) when using defensive force that was intended or likely to cause death or great bodily harm to another if the person against whom the defensive force was used (was in the process of entering) (had entered), unlawfully and without privilege to do so, the (residence) (vehicle) occupied by the defendant.

**COMMENT**

Drawn from R.C. 2901.05(B)(2).

The Committee believes the presumption is determined at the time the victim entered the residence or vehicle and should be distinguished from a duty to retreat under R.C. 2901.09.

2. **PRESUMPTION—REBUTTABLE.** The state claims that this presumption does not apply. This presumption does not apply if the state proved by a preponderance of the evidence that

*(Use appropriate alternative)*

**COMMENT**

R.C. 2901.05(B)(3) advances the following two sets of circumstances in which the R.C. 2901.05(B)(2) presumption does not apply.

(A) the person against whom the defensive force was used (had a right to be in) (was a lawful resident of) the (residence) (vehicle). Even if the state rebuts the presumption of (self-defense) (defense of another), the state must still prove beyond a reasonable doubt that the defendant did not use the force in (self-defense) (defense of another).

**COMMENT**

Drawn from R.C. 2901.05(B)(3)(a) and (B)(4).

*(or)*

(B) the defendant used the defensive force while in a (residence) (vehicle) and he/she was unlawfully, and without privilege to be, in that (residence) (vehicle). Even if the state rebuts the presumption of (self-defense) (defense of another), the state must still prove beyond a reasonable doubt that the defendant did not use the force in (self-defense) (defense of another).

**COMMENT**

Drawn from R.C. 2901.05(B)(3)(b) and (B)(4).

3. **PRIVILEGE.** “Privilege” means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

**COMMENT**

R.C. 2901.01.

4. **RESIDENCE.** “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

**COMMENT**

R.C. 2901.05(D)(3).

5. **DWELLING.** “Dwelling” means a (building) (*specify conveyance of any kind*) that has a roof over it and that is designed to be occupied by people lodging in the (building) (*specify conveyance*) at night, regardless of whether the (building) (*specify conveyance*) is temporary or permanent or is mobile or immobile. (A [building] [*specify conveyance*] includes, but is not limited to, an attached porch, and a [building] [*specify conveyance*] with a roof over it includes, but is not limited to, a tent.)

**COMMENT**

Drawn from R.C. 2901.05(D)(2).

6. **VEHICLE.** “Vehicle” means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

**COMMENT**

R.C. 2901.05(D)(4).

7. **PREPONDERANCE.** OJI-CR 417.29; R.C. 2901.05(A).

**CR 421.25 Insanity: defined [Rev. 4/13/19]**

1. **PRELIMINARY.** If you find that the state failed to prove beyond a reasonable



doubt any element of the offense charged in the indictment (or the act of any lesser included offense), you must find the defendant not guilty. Such a finding of not guilty would complete your duties and you would return a verdict of not guilty. However, if you find that the state proved beyond a reasonable doubt that the defendant did commit the act as charged (or the act of any lesser included offense), you must proceed to determine whether the defendant was insane at the time the act was committed.

2. **INSANITY.** The plea of not guilty by reason of insanity raises the issue of the insanity of the defendant at the time of the commission of the act. To establish the defense of insanity, the defendant must prove by the greater weight of the evidence that at the time of the offense, he/she did not know, as a result of a severe mental disease or defect, the wrongfulness of his/her act. It is not a defense that the defendant's reason, at the time of the offense, was so impaired that he/she did not have the ability to refrain from doing his/her act or acts.

**COMMENT**

R.C. 2901.01 and R.C. 2945.391.

3. **BATTERED PERSONS.** OJI-CR 417.43.

**COMMENT**

R.C. 2945.392.

4. **PREPONDERANCE OF THE EVIDENCE.** OJI-CR 417.29.

**COMMENT**

*See also* OJI-CR 421.27 and OJI-CR 421.29.

5. **EFFECT OF FAILURE.** OJI-CR 417.29 § 6, OJI-CR 421.09 § 6.

**CR 421.27 Insanity: kinds**

1. **TEMPORARY.** Insanity may be of short or of long duration. The test for insanity remains the same irrespective of its duration. Whether a form of temporary insanity exists in this case is a question of fact for you to determine.

2. **INTOXICATION.** Voluntary intoxication, no matter how extreme, is not an insane condition. However, a defect or disease of the mind caused by the use of (intoxicants) (drugs) and resulting in insanity, as previously defined, is a defense to an offense.

3. **NOT A DEFENSE.** An act committed under the stress of (motive) (impulse) (emotion) (rage) (passion) (*describe other condition*), however strong and apparently

uncontrollable, is not an excuse for an offense by a person not otherwise insane as previously defined in these instructions.

**CR 421.29 Insanity: burden and conclusion**

1. I have outlined the essential elements of the offense charged in the indictment and of the lesser included offenses. Each contained one or more essential elements relating to the state of the defendant's mind and the nature of the determination required to commit the act (that is, prior calculation and design, for aggravated murder; purposely causing the death of another for murder; or knowingly causing the death of another, for voluntary manslaughter). I also explained the rule on insanity. I could not include all the law in any single part of these instructions. You must consider each part in the light of and in harmony with all of the instructions.

2. The following instructions on possible verdict forms may assist you. (Read verdict forms with appropriate instructions.)

3. **GUILTY OR NOT GUILTY BY REASON OF INSANITY.** If you find that the state has proved beyond a reasonable doubt all the essential elements of any one of the offenses that have been described, then you must find the defendant guilty of the offense charged or such lesser included offense according to your finding; unless you further find by a preponderance or greater weight of the evidence that the defendant was insane at the time of the commission of the act, in which event your verdict must be not guilty by reason of insanity.

4. **NOT GUILTY.** If after considering all the evidence, you find the state has failed to prove beyond a reasonable doubt all the essential elements of the offense charged or any one of the lesser included offenses, then your verdict must be not guilty.

**COMMENT**

*State v. Staten* (1969), 18 Ohio St.2d 13, 21, 47 O.O.2d 82, 86, 247 N.E.2d 293, 299, fn. 5, points out that no instruction should be given on the presumption of sanity.

(Text continued on page 117)





## Chapter CR 503

### HOMICIDE AND ASSAULT

- CR 503.01 Aggravated murder: death penalty—trial phase R.C. 2903.01 [Rev. 2/9/19]
- CR 503.011 Aggravated murder: death penalty—sentencing phase R.C. 2929.03(D), 2929.04 [Rev. 8/6/14]
- CR 503.02 Murder (offenses committed on and after 9/6/96 but before 6/30/98)
- CR 503.02 Murder (offenses committed on and after 6/30/98) [Rev. 2-24-07]
- CR 503.03 Voluntary manslaughter (offenses committed on and after 9/6/96) [Rev. 1/20/07]
- CR 503.04 Involuntary manslaughter (offenses committed on and after 9/6/96 but before 3/23/00)
- CR 503.04 Involuntary manslaughter (offenses committed on and after 3/23/00)
- CR 503.041 Reckless homicide
- CR 503.05 Negligent homicide
- CR 503.06 Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter (offenses committed on or after 6/1/04) [Rev. 1-23-10]
- CR 503.08 Aggravated vehicular assault; vehicular assault (offenses committed on or after 6/1/04) [Rev. 1-23-10]
- CR 503.11(A) Felonious assault (offenses committed on and after 9/6/96) but before 3/14/07 [Rev. 12-11-10]
- CR 503.11(A) Felonious assault (offenses committed on and after 3/14/07) [Rev. 12-11-10]
- CR 503.11(B) Felonious assault (offenses committed on and after 3/23/00) [Rev. 12-11-10]
- CR 503.12 Aggravated assault (offenses committed on and after 2/3/00 but before 3/14/07) [Rev. 12-11-10]
- CR 503.12 Aggravated assault (offenses committed on and after 3/14/07) [Rev. 12-11-10]
- CR 503.13 Assault R.C. 2903.13 (offenses committed on and after 3/14/07 but before 3/22/13) [Rev. 5-4-13]
- CR 503.13 Assault R.C. 2903.13 (offenses committed on and after 3/22/13) [Rev. 5-4-13]
- CR 503.14 Negligent assault (offenses committed on and after 9/6/96) [Rev. 12-11-10]
- CR 503.15 Permitting child abuse (offenses committed on and after 8/25/99)
- CR 503.16 Failure to provide for functionally impaired person
- CR 503.21 Aggravated menacing (offenses committed on and after 9/6/96)
- CR 503.211 Menacing by stalking (offenses committed on and after 3/10/00 but before 1/1/08) [Rev. 3-29-08]
- CR 503.211 Menacing by stalking R.C. 2903.211 (offenses committed on and after 1/1/08 but before 8/16/16) [Rev. 12/10/16]
- CR 503.211 Menacing by stalking R.C. 2903.211 (offenses committed on and after 8/16/16) [Rev.



12-10-16]

CR 503.22 Menacing (offenses committed on and after 9/6/96)

CR 503.31 Hazing R.C. 2903.31 (offenses committed before 10/7/21) [Rev. 10/9/21]

CR 503.31 Hazing R.C. 2903.31 (offenses committed on and after 10/7/21) [Rev. 10/9/21]

CR 503.311 Failure to report hazing R.C. 2903.311 (offenses committed on and after 10/7/21) [Rev. 10/9/21]

CR 503.34 Patient abuse; neglect (offenses committed on and after 7/1/96) [Rev. 10-11-08]

CR 503.341 Patient endangerment R.C. 2903.341 (offenses committed on and after 1/30/04 but before 10/12/16) [Rev. 2/11/17]

CR 503.341 Patient endangerment R.C. 2903.341 (offenses committed on and after 10/12/16) [Rev. 2/11/17]

CR 503.35 Filing a false patient abuse or neglect complaint

CR 503.01 Aggravated murder: death penalty—trial phase R.C. 2903.01 [Rev. 2/9/19]

#### COMMENT

The Committee believes that the best practice is for the trial judge to provide each juror with an individual, written copy of the final instructions at the time of the oral delivery of the instructions so that the jurors can follow along while the judge reads the instructions. This more comprehensive practice covers additional styles of learning to assist auditory, visual, and tactile learners in understanding the instructions. The recommendation applies to final instructions delivered at each phase of any trial when the trial is divided into multiple phases.

1. The defendant is charged with aggravated murder. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ County, (*other jurisdiction*), Ohio, the defendant (was eighteen years of age or older and)

#### COMMENT

R.C. 2929.023 places the burdens of raising the matter of age, and of going forward with the evidence thereon, upon the defendant. Thereafter, the prosecution must prove that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

(Use appropriate alternative[s])

(A) purposely, and with prior calculation and design, caused the (death of another) (unlawful termination of another's pregnancy);

(or)

(B) purposely caused the (death of another) (unlawful termination of another's

pregnancy) while (committing) (attempting to commit) (fleeing immediately after [committing] [attempting to commit]) the offense(s) of (kidnapping) (rape) (aggravated arson) (arson) (aggravated robbery) (robbery) (aggravated burglary) (burglary) (trespass in a habitation with a person present or likely to be present) (terrorism) (escape);

#### COMMENT

Trespass in a habitation with a person present or likely to be present was added as a predicate offense in H.B. 86 effective 9/30/11.

Where kidnapping is alleged as the underlying felony, there must be a separate animus, apart from murder, to constitute the offense of kidnapping. The test to be used is whether the restraint or movement of the victim is merely incidental to the crime of murder or whether the kidnapping had a significance independent of the murder. A separate offense of kidnapping can occur if there is prolonged restraint, a secretive confinement, or substantial movement of the victim. See *State v. Hartman*, 93 Ohio St.3d 274, 2001-Ohio-1580.

(or)

(C) purposely caused the death of another who was under thirteen years of age at the time of the commission of the offense;

#### COMMENT

Subsection (C) applies to offenses committed on and after 8/6/97.

(or)

(D) purposely caused the death of another (while under) (having broken) detention imposed as a result of having (been found guilty of) (pleaded guilty to) (*insert name of felony*);

#### COMMENT

Subsection (D) applies to offenses committed on and after 12/29/98.

(or)

(E) purposely caused the death of a law enforcement officer when the defendant knew or had reasonable cause to know that the victim was a law enforcement officer and when

(Use appropriate alternative[s])

(1) the law enforcement officer, at the time of the commission of the offense, was engaged in his/her duties.



(or)

(2) it was the defendants specific purpose to kill a law enforcement officer.

**COMMENT**

Subsection (E) applies to offenses committed on and after 12/29/98.

(or)

(F) purposely caused the death of a (first responder) (military member) whom the defendant knew or had reasonable cause to know that the victim was a (first responder) (military member) and when it was the defendant's specific purpose to kill a (first responder) (military member).

**COMMENT**

Subsection (F) applies to offenses committed on and after 3/20/19.

**2. PURPOSELY.**

**COMMENT**

Use the following instructions in place of OJI-CR 417.01. *State v. Wilson*, 74 Ohio St.3d 381, 1996-Ohio-103; *State v. Carter*, 72 Ohio St.3d 545, 1995-Ohio-104.

(A) Purpose is an essential element of the offense of aggravated murder.

(B) **RESULT.** A person acts purposely when it is his/her specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to *(include applicable language from 1[A]–[F] above)*.

**COMMENT**

Drawn from R.C. 2901.22(A).

(C) **ADDITIONAL.** Purpose is a decision of the mind to do an act with a conscious objective of producing a specific result. To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act is known only to himself/herself, unless he/she expresses it to others or indicates it by his/her conduct.

(D) **HOW DETERMINED.** The purpose with which a person (does an act)

(brings about a result) is determined from the manner in which it is done, the (means) (weapon) used and all the other facts and circumstances in evidence.

#### COMMENT

Drawn from *State v. Huffman*, 131 Ohio St. 27 (1936).

An instruction that the law presumes the ordinary consequences of voluntary acts is unconstitutional and invalid if it states a conclusive presumption or if it shifts the burden of persuasion to the defendant. *Sandstrom v. Montana*, 442 U.S. 510 (1979).

In a trial of aggravated murder while committing, attempting or fleeing after committing the felonies listed in R.C. 2903.01(B), if the jury is instructed that the requisite intent to cause death may be inferred from the fact that defendant engaged in a common design with others to commit the offense by force or violence, the jury must also be instructed that the inference is nonconclusive. *State v. Coleman*, 37 Ohio St.3d 286 (1988), paragraph one of the syllabus.

(E) DEADLY WEAPON. If a wound is inflicted upon a person with a deadly weapon in a manner calculated to destroy life, the purpose to cause the death may be, but is not required to be, inferred from the use of the weapon. The inference, if made, is not conclusive.

#### COMMENT

Drawn from *State v. Stallings*, 89 Ohio St.3d 280, 2000-Ohio-164.

(F) MOTIVE. Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon purpose. (Where an act is a crime, a good motive or purpose is not a defense.)

#### COMMENT

Motive is the subjective inducement or reason that prompted the purpose. This instruction is unnecessary except when motive is argued to the jury.

3. PRIOR CALCULATION AND DESIGN. Prior calculation and design means that the purpose to cause the (death) (unlawful termination of another's pregnancy) was reached by a definite process of reasoning in advance of the homicide, which process of reasoning must have included a mental plan involving studied consideration of the method and the (means) (instrument) with which to cause the (death) (unlawful termination of another's pregnancy). To (constitute) (be) prior calculation, there must have been sufficient time and opportunity for the planning of an act of homicide, and the circumstances surrounding the homicide must show a scheme designed to carry out the calculated decision to cause the death. No definite period of time must elapse and



no particular amount of consideration must be given, but acting on the spur of the moment or after momentary consideration of the purpose to cause the death is not sufficient.

**COMMENT**

It is not possible to establish a bright line test that emphatically distinguishes between the presence or absence of prior calculation and design. *State v. Goodwin*, 84 Ohio St.3d 331, 1999-Ohio-356, citing *State v. Taylor*, 78 Ohio St.3d 15, 1997-Ohio-243.

4. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22 (B).
5. REASONABLE CAUSE TO KNOW.

**COMMENT**

The instruction on “reasonable cause to know” should only be used in the very limited cases where the victim is a law enforcement officer, military member, or first responders.

In deciding whether the defendant had reasonable cause to know that (*insert name of [law enforcement officer] [first responder] [military member]*) was a (law enforcement officer) (first responder) (military member), you must put yourself in the position of this defendant with his/her knowledge, or lack of knowledge, and under the circumstances and conditions that surrounded him/her at that time. You must consider the conduct of the persons involved and decide if their acts and words and all the surrounding circumstances would have caused a person of ordinary prudence and care to know that (*insert name of [law enforcement officer] [first responder] [military member]*) was a (law enforcement officer) (first responder) (military member).

**COMMENT**

Drawn from OJI-CR 511.01(B).

6. CAUSATION. Cause is an essential element of the offense of aggravated murder. Cause is an act which directly produces the (death of another) (unlawful termination of another’s pregnancy), and without which it would not have occurred.

**COMMENT**

The Committee believes that this definition is more appropriate in an aggravated murder case than that provided by OJI-CR 417.23, which connotes liability for the natural and foreseeable consequences of an act. This is not applicable to the facts

presented at trial in an aggravated murder trial and this concept would violate the defendant's constitutional rights by introducing a civil law concept of liability that effectively eliminates the States burden to prove the mens rea element of the underlying offenses. The Ohio Supreme Court has at least cautioned trial courts against using foreseeable consequences language in homicide cases. See e.g., *State v. Getsy*, 84 Ohio St.3d 180, 196, 1998-Ohio-533; *State v. Burchfield*, 66 Ohio St.3d 261 (1993).

7. WHILE. ("While committing or attempting to commit") ("While fleeing immediately after committing or attempting to commit") means that the death must occur as part of acts leading up to, or occurring during or immediately after, the commission of (*insert name of underlying felony*) and that the death was directly associated with the (commission) (flight immediately after the commission) of (*insert name of underlying felony*).

#### COMMENT

The term "while" does not indicate that the killing must occur at the same instant as the [underlying felony], or that the killing must have been caused by [it], but, rather, indicates that the killing must be directly associated with the [underlying felony] as part of one continuous occurrence. *State v. Biros*, 78 Ohio St.3d 426, 1997-Ohio-204; *State v. Cooley*, 46 Ohio St.3d 20 (1989), quoting *State v. Cooper*, 52 Ohio St.2d 163 (1977).

8. ATTEMPT. OJI-CR 523.02; R.C. 2923.02.

9. KIDNAPPING. OJI-CR 505.01; R.C. 2905.01.

#### COMMENT

The kidnapping of a child under the age of thirteen in violation of R.C. 2905.01 by any means including deception, for the purpose of committing any felony or inflicting serious physical harm on the victim, is sufficient to satisfy the specification and aggravating circumstance of kidnapping for aggravated murder pursuant to R.C. 2903.01(B) and 2929.04(A)(7). *State v. Morales*, 32 Ohio St.3d 252 (1987), syllabus.

10. RAPE. OJI-CR 507.02; R.C. 2907.02.

11. AGGRAVATED ARSON. OJI-CR 509.02; R.C. 2909.02.

12. ARSON. OJI-CR 509.03; R.C. 2909.03.

13. AGGRAVATED ROBBERY. OJI-CR 511.01; R.C. 2911.01.

14. ROBBERY. OJI-CR 511.02; R.C. 2911.02.

15. AGGRAVATED BURGLARY. OJI-CR 511.11; R.C. 2911.11.



**COMMENT**

A spouse may be criminally liable for trespass and/or burglary in the dwelling of the other spouse who is exercising custody or control over that dwelling. R.C. 3103.04 is inapplicable in criminal cases. *State v. Lilly*, 87 Ohio St.3d 97, 1999-Ohio-251, paragraphs one and two of the syllabus; *State v. O'Neal*, 87 Ohio St.3d 402 (2000).

16. BURGLARY. OJI-CR 511.12; R.C. 2911.12.
17. TERRORISM. OJI-CR 509.24; R.C. 2909.24.
18. ESCAPE. OJI-CR 521.34; R.C. 2921.34.
19. DETENTION. R.C. 2921.01.
20. LAW ENFORCEMENT OFFICER. R.C. 2911.01.
21. FIRST RESPONDER. R.C. 2903.01.
22. MILITARY MEMBER. R.C. 2903.01.
23. SPECIFICATIONS OF AGGRAVATING CIRCUMSTANCES.

**COMMENT**

The jury shall be instructed on its duties in regard to specifications. A specification shall be proved beyond a reasonable doubt, but such instruction shall not mention the penalty which may be the consequence of the jury verdict. R.C. 2929.03(B).

The aggravating circumstance of prior conviction, R.C. 2929.01(A)(5), may, at the defendants option, be decided by the court at the sentencing hearing. R.C. 2929.022(A).

(A) If you find (*insert name of defendant*) guilty of aggravated murder, (and also find that he/she was eighteen years old or older at the time the offense was committed), it is your duty to deliberate further and decide whether the State has proved beyond a reasonable doubt that the defendant is guilty of (an) additional factual question(s) which (is) (are) called (a) specification(s).

**COMMENT**

Specification instructions are required for each specification attached to a count of the indictment. See subsection (D) below.

The parenthetical phrase as to age must be inserted if the defendant raises the matter of age at trial. R.C. 2929.023.

(B) If you find the defendant not guilty of aggravated murder, you will not consider or decide (this) (these) separate question(s).

(C) Your finding or verdict on (this) (these) additional question(s) will be expressed by a verdict of guilty or not guilty. Guilt must be proved beyond a reasonable doubt.

(D) In Specification(s) (*insert number[s]*) attached to Count (*insert number*), you must decide whether the State proved beyond a reasonable doubt that

*(Use appropriate alternative[s])*

(1) the aggravated murder was the assassination of (the President of the United States) (a person in line of succession to the presidency of the United States) (the [Governor] [Lieutenant Governor] of Ohio) (the [President-elect] [Vice President-elect] of the United States) (the [Governor-elect] [Lieutenant Governor-elect] of Ohio) (a candidate for [*insert name of an office described in this division*]);

**COMMENT**

Drawn from R.C. 2929.04(A)(1).

*(or)*

(2) the aggravated murder was committed for hire;

**COMMENT**

Drawn from R.C. 2929.04(A)(2).

*(or)*

(3) the aggravated murder was committed for the purpose of escaping (detection) (apprehension) (trial) (punishment) for another offense committed by the defendant

**COMMENT**

Drawn from R.C. 2929.04(A)(3).

*(or)*

(4) the aggravated murder was committed while the defendant was a prisoner in a detention facility;

**COMMENT**

Drawn from R.C. 2929.04(A)(4) in effect prior to 12/29/98.



Subsection (D)(4) of this instruction applies to offenses committed before 12/29/98.

(or)

(5) the aggravated murder was committed while the defendant was (under detention) (at large after having broken detention);

**COMMENT**

Drawn from R.C. 2929.04(A)(4) in effect on and after 12/29/98.

Subsection (D)(5) of this instruction applies to offenses committed on and after 12/29/98.

(or)

(6) prior to the commission of this aggravated murder the defendant was convicted of (*insert name of alleged offense, an essential element of which was the purposeful killing of or attempt to kill another*);

**COMMENT**

Drawn from R.C. 2929.04(A)(5).

The Committee believes that the judge must determine whether the prior conviction contained the essential element of purposeful killing or attempt to kill.

The death penalty specification statute, R.C. 2929.04(A)(5), does not differentiate between prior murders committed by juveniles tried as adults and murders committed by adults. *State v. Evans*, 63 Ohio St.3d 231 (1992).

A prior out of state conviction for second degree murder cannot be the basis for convicting a defendant of an R.C. 2929.04(A)(5) death specification if the other states law requires less than a purposeful mental state for conviction. *State v. Johnson*, 71 Ohio St.3d 332, 1994-Ohio-304.

The offense of aggravated murder matures when the victim dies. Thus, in a repeat murder specification, it is at that time the defendant must already have been sentenced for a prior conviction of a purposeful killing in order for R.C. 2929.04(A)(5) to apply. *State v. Carter*, 64 Ohio St.3d 218, 1992-Ohio-127.

(or)

(7) the aggravated murder was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant;

**COMMENT**

Drawn from R.C. 2929.04(A)(5).

When there is a course of conduct involving the killing or attempt to kill more than one person, [e]ach aggravated murder count should thus contain only one specification that appellants acts were part of a course of conduct. *State v. Mitts*, 81 Ohio St.3d 223, 1998-Ohio-635; citing *State v. Spisak*, 36 Ohio St.3d 80 (1988).

(or)

(8) the victim of the aggravated murder was a law enforcement officer, whom the defendant had reasonable cause to know or knew to be a law enforcement officer, and

*(Use appropriate alternative[s])*

(a) the law enforcement officer, at the time of the commission of the aggravated murder, was engaged in his/her duties;

(or)

(b) it was the defendant's specific purpose to kill a law enforcement officer;

#### COMMENT

Drawn from R.C. 2929.04(A)(6).

(or)

(9) the aggravated murder was committed while the defendant was (committing) (attempting to commit) (fleeing immediately after [committing] [attempting to commit]) the offense of (kidnapping) (rape) (aggravated arson) (aggravated robbery) (aggravated burglary) and the defendant

*(Use only one alternative)*

(a) was the principal offender in the commission of the aggravated murder;

(or)

(b) was not the principal offender but committed the aggravated murder with prior calculation and design;

#### COMMENT

Drawn from R.C. 2929.04(A)(7).

Criteria set forth in this section are constructed in the alternative. The defendant may be sentenced to death if the defendant was the principal offender, or if the defendant was not the principal offender, the defendant committed the murder with prior calculation and design. *State v. Penix*, 32 Ohio St.3d 369 (1987).

With regard to the courts instructing on both principal offender and prior calculation and design, such an instruction is proper if the alternatives are given to



the jury disjunctively in the same specification. *State v. Cook*, 65 Ohio St.3d 516 (1992).

To sustain a conviction under R.C. 2929.04(A)(7), the felony-murder specification, the defendant need not be the actual killer or principal offender if the defendant acted with prior calculation and design in the aggravated murder. *State v. Ballew*, 76 Ohio St.3d 244, 1996-Ohio-81.

(or)

(10) the victim of the aggravated murder was a witness to an offense and was purposely killed to prevent his/her testimony in any criminal proceeding and the aggravated murder was not committed during the (commission) (attempted commission) (flight immediately after the [commission] [attempted commission]) of the offense to which the victim was a witness;

#### COMMENT

Drawn from R.C. 2929.04(A)(8).

R.C. 2929.04(A)(8) provides that the aggravated murder of the victim was not committed during the offense to which the victim was a witness. *See State v. Coleman*, 85 Ohio St.3d 129, 1999-Ohio-258. (Witness victim was murdered to prevent her testimony at defendant's trial on drug offenses.)

(or)

(11) the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for his/her testimony in any criminal proceeding;

#### COMMENT

Drawn from R.C. 2929.04(A)(8).

(or)

(12) the defendant, in the commission of the aggravated murder, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the aggravated murder, and the defendant

(Use only one alternative)

(a) was the principal offender in the commission of the aggravated murder;

(or)

(b) was not the principal offender but committed the aggravated murder with prior calculation and design.

**COMMENT**

Drawn from R.C. 2929.04(A)(9).

Subsection (D)(12) applies to offenses committed on and after 8/6/97.

The Committee believes that the Comment at OJI-CR 503.01 19, subsection (D)(9), applies to this subsection.

(E) DETENTION FACILITY. R.C. 2921.01.

(F) DETENTION. R.C. 2929.04(A)(4).

(G) COURSE OF CONDUCT. "Course of conduct" means that there is some factual link between the aggravated murder with which the defendant is charged and the other purposeful killing(s) or attempted killing(s) of (another person) (other people) that (is) (are) alleged to make up the course of conduct. The factual link can be one of time, location, murder weapon, cause of death, similar motivation on the defendants part for his/her crimes, or (*describe other factual link[s]*). All of the circumstances of the offenses must be taken into account, and there must be some connection, common (scheme) (plan), pattern, or psychological thread that ties the offenses together.

**COMMENT**

Drawn from *State v. Hand*, 107 Ohio St.3d 378, 2006-Ohio-18; *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008.

(H) LAW ENFORCEMENT OFFICER. R.C. 2911.01(D)(2).

**COMMENT**

Prior versions of R.C. 2929.04(A)(6) referred to peace officers rather than law enforcement officers.

(I) KIDNAPPING. OJI-CR 505.01; R.C. 2905.01.

**COMMENT**

The kidnapping of a child under the age of thirteen, in violation of R.C. 2905.01, by any means including deception, for the purpose of committing any felony or inflicting serious physical harm on the victim, is sufficient to satisfy the specification and aggravating circumstance of kidnapping for aggravated murder pursuant to R.C. 2903.01(B) and 2929.04(A)(7). *State v. Morales*, 32 Ohio St.3d 252 (1987), syllabus.



- (J) RAPE. OJI-CR 507.02; R.C. 2907.02.
- (K) AGGRAVATED ARSON. OJI-CR 509.02; R.C. 2909.02.
- (L) AGGRAVATED ROBBERY. OJI-CR 511.01; R.C. 2911.01.
- (M) AGGRAVATED BURGLARY. OJI-CR 511.11; R.C. 2911.11.

**COMMENT**

A spouse may be criminally liable for trespass and/or burglary in the dwelling of the other spouse who is exercising custody or control over that dwelling. R.C. 3103.04 is inapplicable in criminal cases. *State v. Lilly*, 87 Ohio St.3d 97, 1999-Ohio-251, paragraphs one and two of the syllabus; *State v. O'Neal*, 87 Ohio St.3d 402 (2000).

- (N) PRINCIPAL OFFENDER. In order to find that the defendant was the principal offender in the aggravated murder, you must find that he/she (was the actual killer) (personally performed every act constituting the offense charged).

**COMMENT**

The Ohio Supreme Court has held that the term principal offender in R.C. 2929.04(A)(7) means the actual killer. *State v. Penix*, 32 Ohio St.3d 369 (1987); *State v. Wiles*, 59 Ohio St.3d 71 (1991); *State v. Taylor*, 66 Ohio St.3d 295 (1993). In *State v. Sneed*, 63 Ohio St.3d 3 (1992), the Court concluded that a signed verdict form that stated that Sneed had personally performed every act constituting the offense of aggravated murder was tantamount to a specific finding that Sneed was the principal offender and held that R.C. 2929.04(A)(7) had been complied with. Both definitions of principal offender convey the same meaning with respect to the culpability required by the capital specification. *State v. Getsy*, 84 Ohio St.3d 180, 1998-Ohio-533.

- (O) PRIOR CALCULATION AND DESIGN. OJI-CR 503.01.

**COMMENT**

Prior calculation and design is an aggravating circumstance only in the case of an offender who did not personally kill the victim. *State v. Penix*, 32 Ohio St.3d 369 (1987).

## 24. INFERIOR DEGREE OFFENSE.

**COMMENT**

The Committee believes that the holding in *State v. Rhodes*, 63 Ohio St.3d 613 (1992), applies by analogy to the mitigation of divisions (C), (D), and (E) of aggravated murder to voluntary manslaughter. The Committee believes that divisions (A) (prior calculation and design) and (B) (felony murder) include additional elements that make those divisions not subject to mitigation.

(A) GENERAL. OJI-CR 417.27.

(B) SUDDEN PASSION OR SUDDEN FIT OF RAGE. The defendant claims that at the time of the offense, he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by (*insert name of victim*) that was reasonably sufficient to incite the defendant into using deadly force.

(C) KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

(D) CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

(E) SUDDEN PASSION, SUDDEN FIT OF RAGE. Under the influence of sudden passion or in a sudden fit of rage means there is serious provocation occasioned by the victim that is reasonably sufficient to incite a person into using deadly force; it is an act done in the heat of blood without time to reflect or for passions to cool.

(F) SERIOUS PROVOCATION. For provocation to be reasonably sufficient to bring on sudden passion or a sudden fit of rage, you must decide that the provocation was sufficient to arouse the passions of an ordinary person beyond power of his/her control.

**COMMENT**

Drawn from *State v. Shane*, 63 Ohio St.3d 630 (1992). See also *State v. Wong*, 95 Ohio App.3d 39 (1994).

(G) EMOTIONAL STATE OF DEFENDANT. When deciding whether the defendant was actually under the influence of sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the defendant and the conditions and circumstances that surrounded him/her at the time of the act.

**COMMENT**

Drawn from *State v. Shane*, 63 Ohio St.3d 630 (1992). See also *State v. Wong*, 95 Ohio App.3d 39 (1994).



(H) **DEADLY FORCE.** Deadly force means any force that carries a substantial risk that it will proximately result in the death of any person.

**COMMENT**

R.C. 2901.01.

(I) **SUBSTANTIAL RISK.** Substantial risk means a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

25. **CONCLUSION.** OJI-CR 425.01.

26. **CONCLUSION WITH AFFIRMATIVE DEFENSE.** OJI-CR 425.03.

27. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

28. **CONCLUSION WITH INFERIOR DEGREE OFFENSE.**

(A) If you find that the state failed to prove beyond a reasonable doubt that the defendant purposely caused the (death of [*insert name of victim*]) (unlawful termination of the pregnancy of [*insert name of mother*]), then you must find the defendant not guilty of aggravated murder.

(B) If you find that the state proved beyond a reasonable doubt that the defendant purposely caused the (death of [*insert name of victim*]) (unlawful termination of the pregnancy of [*insert name of mother*]), and you also find that the defendant failed to prove by the greater weight of the evidence that he/she knowingly acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of aggravated murder.

(C) If you find that the state proved beyond a reasonable doubt that the defendant purposely caused the (death of [*insert name of victim*]) (unlawful termination of the pregnancy of [*insert name of mother*]), but you also find that the defendant proved by the greater weight of the evidence that he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty

of voluntary manslaughter.

You may not sign more than one verdict form on this Count.

#### COMMENT

The Committee recommends that the judge read the appropriate verdict form with each alternative and instruct the jury that it may not sign more than one verdict form on this Count.

29. SAMPLE VERDICT FORMS. See also OJI-CR 425.33 for lesser included offenses and inferior degree offenses verdict forms.

#### (A) VERDICT ON AGGRAVATED MURDER.

We, the jury, find (*insert name of defendant*) (GUILTY BEYOND A REASONABLE DOUBT) (NOT GUILTY) of aggravated murder as charged in Count (*insert number of count*) of the indictment.

#### COMMENT

The Committee believes that if there is more than one count of aggravated murder, each verdict form should identify the category of aggravated murder as covered by OJI-CR 503.01 (A)–(E).

#### (B) VERDICT ON AGGRAVATED MURDER SPECIFICATIONS.

#### COMMENT

Specifications must be modified to the facts alleged in the indictment. Submission on separate pages for each specification is recommended.

We, the jury, having found (*insert name of defendant*) GUILTY BEYOND A REASONABLE DOUBT of aggravated murder as charged in Count (*insert number of count*) find (*insert name of defendant*) (GUILTY BEYOND A REASONABLE DOUBT) (NOT GUILTY) of

(*Use appropriate alternative[s]*)

(1) the assassination of (*insert applicable category*);

(*or*)

(2) committing the offense for hire;

(*or*)

(3) committing the offense for the purpose of escaping (detection) (apprehension) (trial) (punishment) for another offense committed by the defendant;



(or)

(4)(a) committing the offense while he/she was a prisoner in a detention facility;

**COMMENT**

Subsection (B)(4)(a) applies to offenses committed before 12/29/98.

(or)

(4)(b) committing the offense while he/she was under (detention) (at large after having broken detention);

**COMMENT**

Subsection (B)(4)(b) applies to offenses committed on and after 12/29/98.

(or)

(5)(a) having been previously convicted of (*insert name of alleged offense, an essential element of which was the purposeful killing of or attempt to kill another*);

(or)

(5)(b) engaging in conduct involving the purposeful killing of or attempted killing of two or more persons by him/her;

(or)

(6) causing the death of a law enforcement officer when the defendant (knew) (had reasonable cause to know) that the victim was a law enforcement officer and

*(Use appropriate alternative[s])*

(a) the law enforcement officer was engaged in his/her duties at the time of commission of the offense;

(or)

(b) the defendants specific purpose was to kill a law enforcement officer;

(or)

(7) committing the offense while he/she was (committing) (attempting to commit) (fleeing immediately after committing or attempting to commit) (specify which of five felonies) and (was the principal offender in the aggravated murder) (committed the aggravated murder with prior calculation and design);

**COMMENT**

Use either principal offender or prior calculation and design language, not both.

(or)

(8) the aggravated murder of a witness who was purposely killed (to prevent) (in retaliation for) his/her testimony in any criminal proceeding.

(or)

(9) causing the death of another who was under thirteen years of age at the time and (was the principal offender in the aggravated murder) (committed the aggravated murder with prior calculation and design).

#### COMMENT

Use either principal offender or prior calculation and design language, not both.

30. **ALTERNATE JURORS.** Those of you selected as alternate jurors to serve on this jury panel must remain and be sequestered until the jury has returned its verdict in open court. A juror selected as an alternate is not permitted to participate in the jury's deliberations unless one of the deliberating jurors is found by the court to be unable or disqualified to perform his or her duties. You will be taken to *(insert location)* apart from the other jurors and will remain under the direction of the bailiff(s) until the verdict is reached. The alternate juror(s) will not accompany the jury to the jury room or participate in deliberations unless directed by the court. The alternate juror(s) continue(s) to be a part of the jury panel while the other jurors are deliberating until fully released from this case by the court. Alternate jurors are required to follow all the courts orders concerning the conduct of the jury. You shall not discuss this case with anyone or each other or tell anyone how you would have voted until you are fully released from this case by the court.

(A) **INSTRUCTION TO JURY PANEL AFTER SUBSTITUTION DURING TRIAL PHASE.** Juror *(insert name or number of juror)* has been replaced by alternate juror *(insert name or number of juror)*. The law requires that you start your deliberations (anew) (over again).

(B) **INSTRUCTION TO JUROR SUBSTITUTED AFTER TRIAL PHASE GUILTY VERDICT.** Juror *(insert name or number of juror)*, you have been selected to replace one of the other jurors in this case. During the trial phase of this case, the jury found *(insert name of defendant)* guilty of *(state capital murder count(s) and specifications that will be considered in sentencing phase)*. Juror *(insert name or number of juror)*, you are bound by that verdict as rendered in the trial phase of this case.

(C) **INSTRUCTIONS TO PANEL AFTER SUBSTITUTION OF JUROR DURING SENTENCING PHASE.** Juror *(insert name or number of juror)* has been replaced by alternate juror *(insert name or number of juror)*. The law requires that you start your deliberations (anew) (over again) as to the sentencing phase of this case. You are to follow all of this courts previous instructions in arriving at any (penalty) (sentence).



**COMMENT**

Crim.R. 24(G)(2) provides that alternate jurors in capital cases shall continue to serve during all phases of the deliberations. Alternate jurors may not be present directly or indirectly in the jury room during any deliberation. The court may substitute alternate jurors during deliberations pursuant to Crim.R. 24(G)(2). If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. If an alternate juror replaces a regular juror after a guilty verdict, the court shall instruct the alternate juror that the juror is bound by that verdict. Alternate jurors may be substituted during sentencing phase deliberations pursuant to Crim.R. 24(G)(2).

**CR 503.011 Aggravated murder: death penalty—sentencing phase R.C. 2929.03(D), 2929.04 [Rev. 8/6/14]****COMMENT**

The Committee believes that it is not appropriate for the jury to be advised that their sentencing verdict is a recommendation, that a verdict of death is not binding on the court, or that a verdict of death is subject to automatic appeal. “We prefer that no reference be made to the finality of the jury’s sentencing decision at all.” *State v. Keith* (1977), 79 Ohio St.3d 514, 518.

“[I]t is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe, as the jury was in this case, that the responsibility for determining the appropriateness of the defendant’s death rests elsewhere,” *Caldwell v. Mississippi* (1985), 472 U.S. 320, 329.

Although R.C. 2929.03 states that a “jury shall recommend” the sentence to be imposed on the offender, the Ohio Supreme Court has repeatedly stated that “because of the possible risk of diminishing jury responsibility, ‘. . . we prefer that in the future no reference be made to the jury regarding the finality of their decision. . . .’” *State v. Williams* (1986), 23 Ohio St.3d 16, 22, quoting *State v. Jenkins* (1984), 15 Ohio St.3d 164, 202-203.

“As we stated in *Jenkins*, supra at 202, and we now emphatically emphasize, the better procedure would be to have no comment by the prosecutor or by the trial judge on the question of who bears the ultimate responsibility for determining the penalty.” *State v. Buell* (1986), 22 Ohio St.3d 124, 144.

The Committee recommends that the following § 1, PRELIMINARY INSTRUCTIONS, be given prior to opening statements in the sentencing phase.

The Committee believes that the best practice is for the trial judge to provide each juror with an individual, written copy of the final instructions at the time of the oral delivery of the instructions so that the jurors can follow along while the judge reads the instructions. This more comprehensive practice covers additional styles of learning to assist auditory, visual, and tactile learners in understanding the

instructions. The recommendation applies to final instructions delivered at each phase of any trial when the trial is divided into multiple phases.

1. **PRELIMINARY INSTRUCTIONS.** Members of the jury, during the trial phase of this case, you heard evidence, testimony and arguments of counsel and found (*insert name of defendant*) guilty of (a) specification(s). In this sentencing phase, (that) (those) (some of those) specification(s) will be addressed and called (an) aggravating circumstance(s). You also heard during the trial phase some evidence, testimony and arguments of counsel as to possible factors in mitigation of the death sentence. In this sentencing phase, which concerns only the determination of sentence, you will hear additional evidence, testimony, arguments of counsel, and perhaps a statement of the defendant. It is not necessary that the defendant take the witness stand or make a statement. The defendant has a constitutional right not to testify or make a statement. The fact that the defendant does not testify or make a statement must not be considered for any purpose. The state will address the aggravating circumstance(s) of which the defendant was found guilty and the defense will address mitigating factors.

In this case, the aggravating circumstance(s) (is) (are) precisely (that) (those) set out in your verdict on specification(s) (*insert number of specification*) to the (*insert number of count*) count of the indictment. (It is) (They are) as follows: (*insert applicable aggravating circumstance[s]*). (This) (These) aggravating circumstance(s) (was) (were) proven in the trial phase and it is not necessary for the State of Ohio to present further evidence to you regarding (this) (these) aggravating circumstance(s). However, only (this) (these) aggravating circumstance(s) may be considered by you during this sentencing proceeding. The aggravated murder itself is not an aggravating circumstance.

Because you found that (an) aggravating circumstance(s) (is) (are) present, the law provides the following four (4) sentencing options for your consideration:

- (A) life imprisonment without parole eligibility for twenty-five full years; or
- (B) life imprisonment without parole eligibility for thirty full years; or
- (C) life imprisonment without the possibility of parole; or
- (D) death.

You are here today to consider which of these sentences to impose. The aggravating circumstance(s) will be weighed against the mitigating factors that have been or will be presented. Mitigating factors are factors about an individual or an offense that weigh in favor of a decision that a life sentence rather than a death sentence is appropriate.

In order for you to decide that the sentence of death shall be imposed upon (*insert name of defendant*), the State of Ohio must prove beyond a reasonable doubt that the aggravating circumstance(s) of which the defendant was found guilty (is) (are) sufficient to outweigh the factors in mitigation of imposing the death sentence. The defendant does not have any burden of proof. Reasonable doubt is present when, after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced that the aggravating circumstance(s) of which the defendant was found guilty outweigh(s) the mitigating factors. Reasonable doubt is a doubt based on



reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his or her own affairs.

I remind you not to discuss this case among yourselves or with anyone else, not to permit anyone to discuss this case with you or in your presence, and not to form or express any opinion on the case until it is finally submitted to you. I also remind you not to watch, read, listen to, or discuss news media accounts of this case.

The order of trial in the sentencing phase is as follows: opening statements of counsel; the state's evidence, if any; the defendant's evidence, if any; the state's rebuttal evidence, if any; the defendant's statement, if any; the final arguments of counsel; the final instructions of law from the court; and your deliberations.

Again, you will be deciding whether the State of Ohio has proved beyond a reasonable doubt that the aggravating circumstance(s) outweigh(s) the mitigating factors. If you find the aggravating circumstance(s) outweigh(s) the mitigating factors, then you must find that the death sentence be imposed upon (*insert name of defendant*). However, if you find that the State of Ohio did not prove beyond a reasonable doubt that the aggravating circumstance(s) outweigh(s) the mitigating factors, then you will enter a verdict imposing one of the life sentences, life imprisonment without parole eligibility for twenty-five full years, life imprisonment without parole eligibility for thirty full years, or life imprisonment without the possibility of parole, whichever you deem appropriate.

You will again be sequestered during your deliberations.

#### COMMENT

The order of proceedings is a matter of judicial discretion. The defendant's statement, if any, may be made at any time during the sentencing phase.

2. JURY FUNCTION. Members of the jury, you have heard the evidence and the arguments of counsel, and it is now my duty to instruct you on the law that is applicable to this proceeding. The court and the jury have separate and distinct functions. It is your function to decide the disputed questions of fact and to determine what sentence shall be imposed upon (*insert name of defendant*), and it is my function to provide to you appropriate instructions on the law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law or to apply your own idea of what you think the law should be.

3. SENTENCING DETERMINATION. During your deliberations you will decide whether (*insert name of defendant*) shall be sentenced to

(A) life imprisonment without parole eligibility for twenty-five full years; or

(B) life imprisonment without parole eligibility for thirty full years; or

- (C) life imprisonment without the possibility of parole; or  
(D) death.

#### COMMENT

Subdivision (A) was changed from twenty to twenty-five years for offenses committed on and after 7/1/96.

Subdivision (C) was added as a new sentence option effective 7/1/96.

4. **BURDEN OF PROOF.** In order for you to decide that the sentence of death shall be imposed upon (*insert name of defendant*), the State of Ohio must prove beyond a reasonable doubt that the aggravating circumstance(s) of which the defendant was found guilty (is) (are) sufficient to outweigh the factors in mitigation of imposing the death sentence. The defendant does not have any burden of proof.

#### COMMENT

In *State v. Lawrence* (1989), 44 Ohio St.3d 24, 27, the Ohio Supreme Court found that a jury instruction that closely tracks R.C. 2929.03(D)(1) and that does not place the burden of proving the existence of a mitigating factor by a preponderance of the evidence on the defendant would adequately guide a jury in its deliberations during the sentencing phase of a capital trial.

Further, such an instruction would ensure that Ohio jurors clearly understand that they are to consider all mitigating evidence in reaching their sentencing recommendation.

5. **REASONABLE DOUBT (SENTENCING PHASE).** Reasonable doubt is present when, after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced that the aggravating circumstance(s) of which the defendant was found guilty outweigh(s) the mitigating factors. Reasonable doubt is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his or her own affairs.

#### COMMENT

The definition of reasonable doubt set forth in OJI-CR 405.07 and used in the trial phase of the case is not appropriate for the sentencing phase. The instruction should convey to jurors that they must be firmly convinced that the aggravating circumstance(s) outweighs the mitigating factor(s). *State v. Goff*, 82 Ohio St.3d 123, 1998-Ohio-369; *State v. Taylor*, 78 Ohio St.3d 15, 1997-Ohio-243.



6. MULTIPLE COUNTS. (*Insert name of defendant*) has been convicted of more than one count of aggravated murder with (an) aggravating circumstance(s). The penalty for each separate count must be determined separately. Only the aggravating circumstance(s) related to a given count may be considered and weighed against the mitigating factors in determining the penalty for that count.

#### COMMENT

When a capital defendant is convicted of more than one count of aggravated murder, the penalty for each individual count must be determined separately. Only the aggravating circumstance(s) related to a given count may be considered in determining the penalty for that count. *State v. Cooley* (1989), 46 Ohio St.3d 20, paragraph 3 of the syllabus; *State v. Poindexter* (1988), 36 Ohio St.3d 1; *State v. Hooks* (1988), 39 Ohio St.3d 67.

7. AGGRAVATING CIRCUMSTANCE(S).

#### COMMENT

The instructions must inform the jury what aggravating circumstances the jury is to consider in this phase and must identify them specifically. See *State v. Hutton* (1990), 53 Ohio St.3d 36, 51, Brown, J. dissenting; *State v. Dorian Hill* (April 25, 1991), 1991 Ohio App. LEXIS 1830, jurisdiction denied at 62 Ohio St.3d 1422 (1991).

If there are guilty findings to any specification on multiple counts, the court must provide the following instruction separately for each count.

Where two or more aggravating circumstances arise from the same act or indivisible course of conduct, and are thus duplicative, the aggravating circumstances will be merged for purposes of sentencing. *State v. Jenkins* (1984), 15 Ohio St.3d 164, paragraph 5 of the syllabus. For example, see *State v. Wiles* (1991), 59 Ohio St.3d 71, (principal offender (A)(7) and escaping detection (A)(3) aggravating circumstances were duplicative and should have been merged); *State v. Spisak* (1988), 36 Ohio St.3d 80, 84; *State v. Mitts* (1998), 81 Ohio St.3d 223, 231, 1998-Ohio-635 (there should not be multiple murder specifications listed for each victim, only one course of conduct specification is appropriate for each count); *State v. Wickline* (1990), 50 Ohio St.3d 114, 122 (merger of escape detection (A)(3) and course of conduct (A)(5) aggravating circumstances); cf. *State v. Waddy* (1992), 63 Ohio St.3d 424, 448 (not required to merge specifications which were based on aggravated burglary and kidnapping.)

The aggravating circumstance(s) that you shall consider as to Count (*insert number of count*) (is) (are)

(*Use appropriate alternative[s]*)

(A) the offense was the assassination of (the president of the United States) (a person

in line of succession to the presidency of the United States) (the [governor] [lieutenant governor] of Ohio) (the [president-elect] [vice president-elect] of the United States) (the [governor-elect] [lieutenant governor-elect] of Ohio) (a candidate for *[insert name of an office described in this division]*).

**COMMENT**

Drawn from R.C. 2929.04(A)(1).

(or)

(B) the offense was committed for hire.

**COMMENT**

R.C. 2929.04(A)(2).

(or)

(C) the offense was committed for the purpose of escaping (detection) (apprehension) (trial) (punishment) for another offense committed by the defendant.

**COMMENT**

Drawn from R.C. 2929.04(A)(3).

(or)

(D) the offense was committed while the defendant was a prisoner in a detention facility.

**COMMENT**

Drawn from R.C. 2929.04(A)(4) in effect prior to 12/29/98.

Subdivision (D) of this instruction applies to offenses committed before 12/29/98.

(or)

(E) the offense was committed while the defendant was (under detention) (at large after having broken detention).

**COMMENT**

Drawn from R.C. 2929.04(A)(4) in effect on and after 12/29/98.



Subdivision (E) of this instruction applies to offenses committed on and after 12/29/98.

(or)

(F) prior to the commission of this offense the defendant was convicted of *(insert name of alleged offense, an essential element of which was the purposeful killing of or attempt to kill another)*.

**COMMENT**

Drawn from R.C. 2929.04(A)(5).

(or)

(G) this offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant.

**COMMENT**

Drawn from R.C. 2929.04(A)(5).

(or)

(H) the victim of the offense was a law enforcement officer, whom the defendant had reasonable cause to know or knew to be a law enforcement officer, and

*(Use appropriate alternative[s])*

(1) the victim, at the time of the commission of the offense, was engaged in his/her duties.

(or)

(2) it was the defendant's specific purpose to kill a law enforcement officer.

**COMMENT**

Drawn from R.C. 2929.04(A)(6).

(or)

(I) the offense was committed while the defendant was (committing) (attempting to commit) (fleeing immediately after [committing] [attempting to commit]) the offense of (kidnapping) (rape) (aggravated arson) (aggravated robbery) (aggravated burglary) and the defendant

*(Use only one alternative)*

(1) was the principal offender in the commission of the aggravated murder.

(or)

(2) committed the aggravated murder with prior calculation and design.

**COMMENT**

Drawn from R.C. 2929.04(A)(7).

Use only the alternative found in the trial phase.

(or)

(J) the victim of the aggravated murder was a witness to an offense and was purposely killed to prevent his/her testimony in any criminal proceeding and the aggravated murder was not committed during the (commission) (attempted commission) (flight immediately after the [commission] [attempted commission]) of the offense to which the victim was a witness.

**COMMENT**

Drawn from R.C. 2929.04(A)(8).

(or)

(K) the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for his/her testimony in any criminal proceeding.

**COMMENT**

Drawn from R.C. 2929.04(A)(8).

(or)

(L) the defendant, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and the defendant

*(Use only one alternative)*

(1) was the principal offender in the commission of the offense.

(or)

(2) committed the offense with prior calculation and design.

**COMMENT**

Drawn from R.C. 2929.04(A)(9).



Subdivision (L) applies only to offenses committed on and after 8/6/97.

Use only the alternative found in the trial phase.

8. **AGGRAVATING CIRCUMSTANCES DO NOT INCLUDE.** The aggravated murder itself is not an aggravating circumstance. You may only consider the aggravating circumstance(s) that (was) (were) just described to you and which accompanied the aggravated murder.

#### COMMENT

The instructions must inform the jury that the aggravated murder is not itself an aggravating circumstance. *State v. Henderson* (1988), 39 Ohio St.3d 24.

9. **MERGER OF AGGRAVATING CIRCUMSTANCES.** Although there were more aggravating circumstances found by you during the trial phase of this case, you will only consider the aggravating circumstance(s) that I have just described to you.

#### COMMENT

Where two or more aggravating circumstances arise from the same act or indivisible course of conduct, and are thus duplicative, the aggravating circumstances will be merged for purposes of sentencing. *State v. Jenkins* (1984), 15 Ohio St.3d 164, paragraph 5 of the syllabus. For example, see *State v. Wiles* (1991), 59 Ohio St.3d 71 (principal offender (A)(7) and escaping detection (A)(3) aggravating circumstances were duplicative and should have been merged); *State v. Spisak* (1988), 36 Ohio St.3d 80; *State v. Mitts*, 81 Ohio St.3d 223, 1998-Ohio-635 (there should not be multiple murder specifications listed for each victim, only one course of conduct specification is appropriate for each count); *State v. Wickline* (1990), 50 Ohio St.3d 114 (merger of escape detection (A)(3) and course of conduct (A)(5) aggravating circumstances); cf. *State v. Waddy* (1992), 63 Ohio St.3d 424 (not required to merge specifications which were based on aggravated burglary and kidnapping).

10. **MITIGATING FACTORS.** Mitigating factors are factors about an individual or an offense that weigh in favor of a decision that a life sentence rather than a death sentence is appropriate. Mitigating factors are factors that diminish the appropriateness of a death sentence. You must consider all of the mitigating factors presented to you. Mitigating factors include, but are not limited to, the nature and circumstances of the offense, the history, character and background of the defendant, and

(Use appropriate alternative[s])

(A) whether the victim of the offense induced or facilitated the offense.

(or)

(B) whether it is unlikely that the offense would have been committed, but for the fact that the defendant was under duress, coercion, or strong provocation.

(or)

(C) whether, at the time of committing the offense, the defendant, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of the law.

(or)

(D) the youth of the defendant.

(or)

(E) the defendant's lack of a significant history of prior criminal convictions and delinquency adjudications.

(or)

(F) since the defendant was not the principal offender, the degree of the defendant's participation in the offense and the degree of the defendant's participation in the acts that led to the death of the victim.

(or)

(G) any other factors that weigh in favor of a sentence other than death. This means you are not limited to the specific mitigating factors that have been described to you. You should consider any other mitigating factors that weigh in favor of a sentence other than death.

Any one of these mitigating factors standing alone is sufficient to support a sentence of life imprisonment if the aggravating circumstance(s) (is) (are) not sufficient to outweigh that mitigating factor beyond a reasonable doubt. Also, the cumulative effect of the mitigating factors will support a sentence of life imprisonment if the aggravating circumstance(s) (is) (are) not sufficient to outweigh the mitigating factors beyond a reasonable doubt.

It is not necessary that the members of the jury unanimously agree on the existence of a mitigating factor before that factor can be weighed by any juror against the aggravating circumstance(s).

#### COMMENT

Drawn from R.C. 2929.04(B).

The Ohio Supreme Court has described a mitigating factor as one that "lessens the moral culpability of the offender or diminishes the appropriateness of death as a penalty." *State v. DePew* (1988), 38 Ohio St.3d 275, 292, quoting *State v. Steffen* (1987), 31 Ohio St.3d 111, 129. A more recent case puts in doubt the appropriateness of the "lessens the moral culpability" language. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426. Until the Ohio Supreme Court clarifies this discrepancy, the Committee believes that the language should be deleted from the definition of



mitigating factors. The current instruction deletes the language. Instructions should also not define mitigating factors as those that “reduce culpability” because the jury has already found the defendant culpable by returning a guilty verdict. Further, instructions suggesting consideration of “blameworthiness,” or suggesting “excuse” are also wrong. See *Boyd v. California* (1990), 494 U.S. 370; *State v. Woodard*, 68 Ohio St.3d 70, 1993-Ohio-241; *State v. Lawrence* (1989), 44 Ohio St.3d 24; *State v. Holloway* (1988), 38 Ohio St.3d 239.

The court should not instruct on mitigating factors in R.C. 2929.04(B)(1)-(7) not raised by the defense. *State v. DePew* (1988), 38 Ohio St.3d 275; *State v. Hicks* (1989), 43 Ohio St.3d 72; *State v. Cooley* (1989), 46 Ohio St.3d 20. The Committee believes that the court should instruct on these mitigating factors raised by the evidence regardless of who produced it, if requested by the defense.

Further, an instruction should not suggest that the jury must be unanimous in finding a mitigating factor is present before such mitigating factor is considered in sentencing. *Mills v. Maryland* (1988), 486 U.S. 367; *State v. Lawrence* (1989), 44 Ohio St.3d 24; *State v. Seiber* (1990), 56 Ohio St.3d 4.

## 11. DURESS AND COERCION.

(A) “Duress” means that the defendant was compelled to act, either by actual physical force or threatened physical force directed toward (him/her) (a near relative of defendant).

(B) “Coercion” means ([force] [threat of force] [strong domination] by another) (urgent circumstances) (or some combination of them) which overcame the (mind) (volition) of the defendant so that he/she acted other than he/she would have acted in the absence of these influences.

(C) Whether a course of conduct placed the defendant under (duress) (coercion) depends on the effect of the conduct upon the defendant considering the defendant’s age, sex, health, mental condition, (the relationship of the near relative to the defendant), and all the surrounding circumstances.

### COMMENT

In *State v. Getsy*, 84 Ohio St.3d 180, 1998-Ohio-533, the Ohio Supreme Court held that “duress” and “coercion” are to be construed more broadly when considered as mitigating factors than when considered as affirmative defenses. See also *State v. Woods* (1976), 48 Ohio St.2d 127. “These constructions appropriately allow consideration of the broad range of information relevant to mitigation set out in R.C. 2929.04.” *State v. Osborne* (1976), 49 Ohio St.2d 135, 147. Therefore, even when duress is not an affirmative defense to aggravated murder under R.C. 2903.01(B), it is entitled to some weight as a mitigating factor. However, see *State v. Dickerson* (1989), 45 Ohio St.3d 206 and *State v. Bedford* (1988), 39 Ohio St.3d 122 (The stress from the personal turmoil in defendant’s life does not qualify as a [B] [2] mitigating factor).

The application of the concepts of duress and coercion varies greatly, and turns

largely upon the circumstances of each individual case, including the character of the one sought to be influenced. "In determining whether a course of conduct results in duress, the question is not what effect such conduct would have upon an ordinary man but rather the effect upon the particular person toward whom such conduct is directed, and in determining such effect the age, sex, health and mental condition of the person affected, the relationship of the parties and all the surrounding circumstances may be considered." *Tallmadge v. Robinson* (1952), 158 Ohio St. 333, paragraph two of the syllabus.

12. **WEIGHING PROCESS.** The procedure that you must follow in arriving at your verdict in this phase of the trial is prescribed by law, and in this regard, you shall consider all of the testimony and evidence relevant to the aggravating circumstance(s) the defendant was found guilty of committing and mitigating factors raised at both phases of the trial, the (statement of [insert name of defendant]) (pre-sentence investigation report) (mental examination report) (final arguments of counsel). You shall then decide whether the State of Ohio proved beyond a reasonable doubt that the aggravating circumstance(s) outweigh(s) the mitigating factors present in this case.

It is the quality of the evidence regarding aggravating circumstance(s) and mitigating factors that must be given primary consideration by you. The quality of the evidence may or may not be the same as the quantity of evidence; that is, the number of witnesses or exhibits presented in this case.

13. **FINDINGS.** If all twelve of you find that the State of Ohio proved beyond a reasonable doubt that the aggravating circumstance(s) the defendant was guilty of committing (is) (are) sufficient to outweigh the mitigating factors in this case, then it will be your duty to decide that the sentence of death shall be imposed upon (insert name of defendant).

If you find that the State of Ohio has failed to prove beyond a reasonable doubt that the aggravating circumstance(s) (insert name of defendant) was guilty of committing (is) (are) sufficient to outweigh the mitigating factors present in this case, then it will be your duty to decide which of the following life sentence alternatives should be imposed: the sentence of life imprisonment with no parole eligibility until twenty-five full years of imprisonment have been served; the sentence of life imprisonment with no parole eligibility until thirty full years of imprisonment have been served; or life imprisonment without the possibility of parole.

14. **EQUAL WEIGHT.** If the weight of the aggravating circumstance(s) and mitigating factors are equal then you must proceed to consider the life sentence alternatives.

15. **UNANIMITY.** You are not required to unanimously find that the State failed to prove that the aggravating circumstance(s) outweigh(s) the mitigating factors before considering one of the life sentence alternatives. You should proceed to consider and choose one of the life sentence alternatives if any one or more of you conclude that the state has failed to prove beyond a reasonable doubt that the aggravating circumstance(s) outweigh(s) the mitigating factors. One juror may prevent a death penalty determination by finding that the aggravating circumstance(s) do not outweigh the mitigating factors.



You must be unanimous on one of the life sentence alternatives before you can render that verdict to the court. If you cannot unanimously agree on a specific life sentence, you will then inform the court by written note that you are unable to render a sentencing verdict.

#### COMMENT

The jury need not be unanimous in finding death was inappropriate before considering the life sentences. The instruction “[y]ou are not required to determine unanimously that the death sentence is inappropriate before you consider the life sentences” is desirable, but absent a request by counsel, will not constitute plain error. *State v. Madrigal*, 87 Ohio St.3d 378, 393-395, 2000-Ohio-448; *State v. Taylor*, 78 Ohio St.3d 15, 29, 1997-Ohio-243; *State v. Brooks*, 75 Ohio St.3d 148, 159-160, 1996-Ohio-134.

“In Ohio a solitary juror may prevent a death penalty recommendation by finding that the aggravating circumstances in the case do not outweigh the mitigating factors. Jurors from this point forward should be so instructed.” *State v. Brooks*, 75 Ohio St.3d 148, 159-160, 1996-Ohio-134.

16. **EVIDENCE.** The opening statements and final arguments of counsel are designed to assist you, but they are not evidence. Although the arguments of counsel are not evidence in this case, the law permits you to consider the arguments of counsel to the extent that they are relevant to the sentence that should be imposed upon (*insert name of defendant*).

Some of the evidence and testimony that you considered in the trial phase of this case may not be considered in this sentencing phase. For purposes of this proceeding, you are to consider only that evidence admitted in the trial phase that is relevant to the aggravating circumstance(s) of which the defendant has been found guilty and to any of the mitigating factors. (*Provide case specific instructions as to trial phase evidence and exhibits not being admitted during the sentencing phase.*) You will also consider all of the evidence admitted during the sentencing phase (together with the defendant’s own statement).

#### COMMENT

It is the trial court’s responsibility, not the jury’s, to determine what evidence is relevant. The trial court must provide case specific instructions as to trial phase evidence and exhibits not admissible in the sentencing phase. The trial court errs in admitting all the evidence from the trial phase into the penalty phase and instructing the jury to consider “all the evidence, including exhibits presented in the first phase of this trial which you deem to be relevant,” without making a relevancy determination. *State v. Getsy*, 84 Ohio St.3d 180, 201, 1998-Ohio-533.

Under *State v. DePew* (1988), 38 Ohio St.3d 275, paragraph one of the syllabus and 282-283, 287, “only those exhibits and photos relevant to the (particular)

aggravating circumstance (the offender was found guilty of committing)” are to be introduced by the State at the penalty phase.

17. **SPECULATION.** You must not speculate as to why the court sustained an objection to any question or what the answer to such question might have been. You may not draw any inference or speculate on the truth of any suggestion included in a question that was not answered.

18. **CREDIBILITY.** You are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence. To weigh the evidence, you must consider the credibility of the witnesses (including the defendant). You will apply the tests of truthfulness which you apply in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which he or she testified; his or her accuracy of memory; frankness or lack of it; intelligence; interest and bias, if any; together with all the facts and circumstances surrounding the testimony.

Applying these tests, you will assign to the testimony of each witness such weight as you deem proper. You are not required to believe the testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your province to determine what testimony is worthy of belief and what testimony is not worthy of belief.

19. **DEFENDANT TESTIFIES.** The (testimony) (statement) of the defendant is to be weighed by the same rules that apply to other witnesses.

#### COMMENT

An instruction should not suggest that the defendant’s testimony is less credible or less valuable due to its unsworn nature, or inferring that the failure to make a sworn statement gives rise to an adverse inference. *State v. DePew* (1988), 38 Ohio St.3d 275, paragraph two of the syllabus.

20. **DEFENDANT DOES NOT TESTIFY.** It is not necessary that the defendant take the witness stand or make a statement. The defendant has a constitutional right not to testify or make a statement. The fact that the defendant did not testify or make a statement must not be considered for any purpose.

21. **EXPERT WITNESSES.** Generally a witness may not express an opinion. However, a person who follows a (profession) (special line of work) may express his/her opinion because of his/her education, knowledge and experience. Such testimony is admitted for whatever assistance it may provide.

22. **HYPOTHETICAL QUESTION.** Questions have been asked in which (an) expert witness(es) (was) (were) permitted to assume that certain facts were true and to give an opinion based upon such assumption. You must decide whether the assumed facts, upon



which the expert(s) based his/her opinion, are true. If any assumed fact was not established, you will determine its effect upon the opinion of the expert(s).

23. **WEIGHT OF EXPERT TESTIMONY.** As with other witnesses, upon you alone rests the duty of deciding what weight should be given to the testimony of the expert(s). In deciding its weight, you may take into consideration his/her skill, experience, knowledge, veracity, familiarity with the facts of this case, and the usual rules for testing credibility and deciding the weight to be given to testimony.

24. **NATURE AND CIRCUMSTANCES.** When you consider the nature and circumstances of the offense, you may only consider them if they have any mitigating value. You may not consider the nature and circumstances of the crime as an aggravating circumstance.

#### COMMENT

In the sentencing phase of a capital trial, the “aggravating circumstance(s)” against which the mitigating evidence is to be weighed are limited to the specifications of aggravating circumstance(s) set forth in R.C. 2929.04(A)(1) through (8) that have been alleged in the indictment and proved beyond a reasonable doubt. *State v. Wogenstahl*, 75 Ohio St.3d 344, 1996-Ohio-219, paragraph one of the syllabus. It is improper for prosecutors in the penalty phase of a capital trial to make any comment before a jury that the nature and circumstances of the offense are “aggravating circumstances.” *State v. Wogenstahl*, 75 Ohio St.3d 344, 1996-Ohio-219, paragraph two of the syllabus.

25. **JUST VERDICT.** You must not be influenced by any consideration of sympathy or prejudice. It is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the court to your findings, and to render your verdict accordingly. In fulfilling your duty, your efforts must be to arrive at a just verdict. Consider all the evidence and make your finding with intelligence and impartiality, and without bias, sympathy or prejudice. If, during the course of the trial, the court said or did anything that you consider an indication of the court’s view on the facts, you are instructed to disregard it.

#### COMMENT

“The instruction to the jury in the penalty phase of a capital prosecution to exclude consideration of bias, sympathy or prejudice is intended to insure that the sentencing decision is based upon a consideration of the reviewable guidelines fixed by statute as opposed to the individual juror’s personal biases or sympathies.” *State v. Jenkins* (1984), 15 Ohio St.3d 164, paragraph three of the syllabus; *State v. Steffen* (1987), 31 Ohio St.3d 111, 125.

26. **VERDICTS.** You will have four verdict forms in your possession during your deliberations in the jury room. I will read these four verdict forms in precisely the same

order as my previous instructions were presented to you. You are not to make any inference from the order in which I read these forms to you.

(A) We, the jury, being duly impaneled and sworn, do hereby find that the aggravating circumstance(s) that the defendant was found guilty of committing, do(es) not outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt.

We therefore unanimously find that the sentence of life imprisonment without parole eligibility for twenty-five full years should be imposed upon (*insert name of defendant*).

(B) We, the jury, being duly impaneled and sworn, do hereby find that the aggravating circumstance(s) that the defendant was found guilty of committing, do(es) not outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt.

We therefore unanimously find that the sentence of life imprisonment without parole eligibility for thirty full years should be imposed upon (*insert name of defendant*).

(C) We, the jury, being duly impaneled and sworn, do hereby find that the aggravating circumstance(s) that the defendant was found guilty of committing, do(es) not outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt.

We therefore unanimously find that the sentence of life imprisonment without the possibility of parole should be imposed upon (*insert name of defendant*).

(D) We, the jury, being duly impaneled and sworn, do hereby find that the aggravating circumstance(s) that the defendant was found guilty of committing, do(es) outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt.

We therefore unanimously find that the sentence of death should be imposed upon (*insert name of defendant*).

To render a verdict, all twelve jurors must agree and sign the particular verdict form. When all twelve jurors agree upon a verdict, all twelve jurors will sign the appropriate verdict form in ink and inform the bailiff. The bailiff will then return you to the courtroom.

Should you be unable to reach a verdict after complete and full deliberations, you shall advise the court accordingly in writing. You will then receive further instructions from the court.

27. **FOREPERSON.** The foreperson, whom you previously selected, may continue in that capacity or you may elect someone entirely different for this phase of the proceedings. The foreperson will make sure that your discussions are orderly and that each juror has an opportunity to discuss the case and to cast his or her vote. Otherwise, the authority of the foreperson is the same as any other juror.

28. **CONDUCT WHILE DELIBERATING.** Your initial conduct upon entering the jury room is a matter of importance. It is not wise to immediately express a



determination to insist upon a certain verdict because, if your sense of pride is aroused, you may hesitate to change your position even if you decide that you are wrong. Consult with one another. Consider each other's views and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourselves, but you should do so only after a discussion and consideration of the entire case with your fellow jurors. Do not hesitate to change an opinion, if convinced it is wrong. However, you should not surrender honest (convictions) (beliefs) in order to be congenial or to reach a verdict solely because of the opinion of the other jurors.

29. **JURY HAS A QUESTION.** If during your deliberations you have a question it should be discussed in the privacy of your jury room. It should not reflect the status of your deliberations. It should be reduced to writing so that there will be no misunderstanding as to what you request. It should then be delivered to the bailiff who will submit it to the court.

30. **FINAL REMARKS.** I will place in your possession the exhibits and the four verdict forms. The foreperson will retain possession of the exhibits and the verdict forms and return them to the courtroom when you have reached a verdict. These are the only exhibits you may consider. Until your verdict has been announced in open court, you are not to disclose to anyone else the status of your deliberations or the nature of your verdict.

Deliberation should take place only when all twelve jurors are in the jury deliberation room together. Should any one juror absent himself or herself at any time, all deliberations must cease until all twelve jurors are together in the jury deliberation room.

31. **ALTERNATE JURORS.** Those of you selected as alternate jurors to serve on this jury panel must remain and be sequestered until the jury has returned its verdict in open court. A juror selected as an alternate is not permitted to participate in the jury's deliberations unless one of the deliberating jurors is found by the court to be unable or disqualified to perform his or her duties. You will be taken to (*insert location*) apart from the other jurors and will remain under the direction of the bailiff(s) until the verdict is reached. The alternate juror(s) will not accompany the jury to the jury room or participate in deliberations unless directed by the court. The alternate juror(s) continue(s) to be a part of the jury panel while the other jurors are deliberating until you are fully released from this case by the court. You shall not discuss this case with anyone or each other or tell anyone how you would have voted until you are fully released from this case by the court.

#### COMMENT

Crim.R. 24(G)(2) provides that alternate jurors in capital cases shall continue to serve during all phases of the deliberations. Alternate jurors may not be present directly or indirectly in the jury room during any deliberation. Alternate jurors may be substituted during sentencing phase deliberations pursuant to Crim.R. 24(G)(2).

If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. If a substitution of an alternate is necessary during deliberations in the sentencing phase, the court should give the instruction found in the comment to OJI-CR 503.01 § 26 that the juror is bound by the trial phase guilty verdict.

32. **SEQUESTRATION.** You will be sequestered during your deliberations in the sentencing phase of this case. It is impossible for the court to determine the length of time that your deliberations will take. Take that time which you believe to be appropriate to thoroughly and carefully review all of the evidence and other information provided to you. The rules to be followed during sequestration will be identical to the rules which were followed by you during the trial phase of this case.

33. **INSTRUCTIONS GIVEN TO THE JURY IN THE SENTENCING PHASE WHEN THEY ARE "DEADLOCKED."** In a large portion of cases, absolute certainty cannot be attained or expected. Although the verdict must reflect the verdict of each individual juror and not mere acquiescence in the conclusion of other jurors, each question submitted to you should be examined with proper regard and deference to the opinion of others.

It is desirable that the case be decided. It is your duty to decide the case if you can conscientiously do so. You should listen to one another's arguments with a disposition to be persuaded. Do not hesitate to reexamine your views and change your position if you are convinced that it is erroneous. If there is disagreement, all jurors should reexamine their positions, given that a unanimous verdict has not been reached. Jurors for any of the verdicts should consider whether their doubt is reasonable, considering that it is not shared by others equally honest who have heard the same evidence and with the same desire to arrive at a verdict, and under the same oath.

Likewise, jurors for any of the verdicts should ask themselves whether they might not reasonably doubt the correctness of the judgment not concurred in by all the other jurors. You shall return a verdict of death if you unanimously, and that means all twelve, find beyond a reasonable doubt that the aggravating circumstance(s) outweigh(s) the mitigating factors. If you do not so find, you shall then begin deliberations on the life sentence options, and if possible, unanimously return a verdict of life imprisonment with parole eligibility after twenty-five full years, or life imprisonment with parole eligibility after thirty full years, or life imprisonment without the possibility of parole. However, you should not surrender honest convictions in order to be congenial or to reach a verdict solely because of the opinion of other jurors. If it is impossible for you to reach a decision in this case, please report this fact to the court in writing. You will now be excused to resume your deliberations.

#### COMMENT

"When a jury becomes irreconcilably deadlocked during its sentencing deliberations in the penalty phase of a capital murder trial and is unable to reach a unanimous verdict to recommend any sentence authorized by R.C. 2929.03(C)(2),



the trial court is required to sentence the offender to life imprisonment with parole eligibility after serving twenty full years, or life imprisonment with parole eligibility after serving thirty full years.” *State v. Springer* (1992), 63 Ohio St.3d 167, syllabus. Since *Springer* was decided, the General Assembly has modified the life sentence options to: life imprisonment with parole eligibility after serving twenty-five full years or life imprisonment with parole eligibility after serving thirty full years, or life imprisonment without the possibility of parole.

No exact line can be drawn as to how long a jury must deliberate in the penalty phase before a trial court should instruct the jury to limit itself to the life sentence options or take the case away from the jury, as done in *State v. Springer* (1992), 63 Ohio St.3d 167. Each case must be decided based upon the particular circumstances. In *State v. Mason*, 82 Ohio St.3d 144, 1998-Ohio-370, the Court found that after only four and one-half hours of deliberations, the trial court acted appropriately by giving a modified *Howard* [*State v. Howard* (1989), 42 Ohio St.3d 18] charge. The circumstances show that the jury was not irreconcilably deadlocked, and the modified *Howard* charge did not coerce a death verdict. The Ohio Supreme Court has approved using supplemental instructions urging jurors to continue deliberations to try to reach a unanimous penalty verdict. See, e.g., *State v. Tyler* (1990), 50 Ohio St.3d 24, 26. Such supplemental instructions to a jury considering the death penalty do not violate due process. *Lowenfield v. Phelps* (1988), 484 U.S. 231.

**CR 503.02 Murder R.C. 2903.02 (offenses committed on and after 9/6/96 but before 6/30/98)**

1. The defendant is charged with murder. Before you can find the defendant guilty of murder you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]).

**COMMENT**

Felonious assault with a deadly weapon is not a lesser included offense of attempted murder. *State v. Barnes* (2002), 94 Ohio St.3d 21, 2002-Ohio-68.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

**COMMENT**

In cases of transferred intent where the defendant intends to kill a specific person and the deceased is accidentally killed instead, the above instruction must be modified to meet the facts and circumstances in evidence. *State v. Sowell* (1988), 39 Ohio St.3d 322, 530 N.E.2d 1294.

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A) — (C).

5. AFFIRMATIVE DEFENSE:

**COMMENT**

See *State v. Rhodes* (1992), 63 Ohio St.3d 613, 590 N.E.2d 261.

(A) GENERAL. OJI-CR 417.27.

(B) SUDDEN PASSION OR SUDDEN FIT OF RAGE. The defendant claims that at the time of the offense, he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by (insert name of victim) that was reasonably sufficient to incite the defendant into using deadly force.

(C) KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

(D) CAUSATION. OJI-CR 417.23.

(E) SUDDEN PASSION, SUDDEN FIT OF RAGE (DEFINED). The defendant is "under the influence of sudden passion or in sudden fit of rage" when there is serious provocation occasioned by the victim that is reasonably sufficient to incite a person into using deadly force is an act done in the heat of blood without time to reflect or for passions to cool.

(F) SERIOUS PROVOCATION. For provocation to be reasonably sufficient to bring on sudden passion or a sudden fit of rage, you must determine that the provocation was sufficient to arouse the passions of an ordinary person beyond the power of his/her control.

**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630, 590 N.E.2d 272. See also, *State v. Wong* (1994), 95 Ohio App.3d 39, 52, 641 N.E.2d 1137.

(G) EMOTIONAL STATE OF DEFENDANT. In determining whether the defendant was actually under the influence of sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the defendant and the conditions and circumstances that surrounded him/her at the time of the act.

**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630, 590 N.E.2d 272. See also *State v. Wong* (1994), 95 Ohio App.3d 39, 52, 641 N.E.2d 1137.



(H) DEADLY FORCE. “Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.

**COMMENT**

R.C. 2901.01(A)(2).

(I) SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C.2901.01(A)(8).

6. CONCLUSION WITHOUT AFFIRMATIVE DEFENSE. OJI-CR 425.01.

7. CONCLUSION WITH AFFIRMATIVE DEFENSE. If you find that the state failed to prove beyond a reasonable doubt that the defendant purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), then you must find the defendant not guilty of murder.

If you find that the state proved beyond a reasonable doubt that the defendant purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), and you also find that the defendant failed to prove by the greater weight of the evidence that he/she knowingly acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of murder.

If you find that the state proved beyond a reasonable doubt that the defendant purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), but you also find that the defendant proved by the greater weight of the evidence that he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant not guilty of murder and guilty of voluntary manslaughter.

If you find that the state failed to prove beyond a reasonable doubt that the defendant knowingly caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), then you must find the defendant not guilty of voluntary manslaughter.

**COMMENT**

Drawn from *State v. Rhodes* (1992), 63 Ohio St.3d 613, 590 N.E.2d 261. See also, OJI-CR 425.03.

8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.02 Murder R.C. 2903.02 (offenses committed on and after 6/30/98)**  
**[Rev. 2-24-07]**

1. The defendant is charged with murder. Before you can find the defendant guilty of murder you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant

*(Use appropriate alternative)*

(A) purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]).

**COMMENT**

Felonious assault with a deadly weapon is not a lesser included offense of attempted murder. *State v. Barnes* (2002), 94 Ohio St.3d 21, 2002-Ohio-68.

*(or)*

(B) caused the death of *(insert name of victim)* as a proximate result of (committing) (attempting to commit) *(name offense of violence that is a felony of the first or second degree and not a violation of R.C. 2903.03 or 2903.04)*.

**COMMENT**

The Committee believes that the mental culpability under (B) is that required by the offense the defendant was committing or attempting to commit. *Stanley v. Turner* (C.A. 6, 1993), 6 F.3d 399; *State v. Voland* (C.P. Clermont Co. 1999), 99 Ohio Misc.2d 61, 716 N.E.2d 299.

R.C. 2903.02(B) does not apply to an offense that becomes a felony of the first or second degree only because the offender has previously been convicted of that offense or another specified offense. R.C. 2903.02(C).



## 2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

**COMMENT**

In cases of transferred intent where the defendant intends to kill a specific person and the deceased is accidentally killed instead, the above instruction must be modified to meet the facts and circumstances in evidence. *State v. Sowell* (1988), 39 Ohio St.3d 322, 530 N.E.2d 1294.

## 3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

## 4. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A)–(C).

## 5. UNDERLYING OFFENSE. Before you can find that the defendant was (committing) (attempting to commit) (insert name of applicable offense), you must find beyond a reasonable doubt that the defendant (describe each element of the applicable offense).

**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases. The verdict must state whether the underlying offense was a felony or a misdemeanor.

## 6. INFERIOR DEGREE OFFENSE:

**COMMENT**

See *State v. Rhodes* (1992), 63 Ohio St.3d 613; *State v. Muscatello* (1978), 55 Ohio St.2d 201.

## (A) GENERAL. OJI-CR 417.27.

(B) SUDDEN PASSION OR SUDDEN FIT OF RAGE. The defendant claims that at the time of the offense, he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by (insert name of victim) that was reasonably sufficient to incite the defendant into using deadly force.

## (C) KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

## (D) CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

(E) SUDDEN PASSION, SUDDEN FIT OF RAGE. "Under the influence of sudden passion or in a sudden fit of rage" means there is serious provocation occasioned by the victim that is reasonably sufficient to incite a person into using deadly force; it is an act done in the heat of blood without time to reflect or for passions to cool.

(F) **SERIOUS PROVOCATION.** For provocation to be reasonably sufficient to bring on sudden passion or a sudden fit of rage, you must decide that the provocation was sufficient to arouse the passions of an ordinary person beyond the power of his/her control.

**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630. See, also, *State v. Wong* (1994), 95 Ohio App.3d 39.

(G) **EMOTIONAL STATE OF DEFENDANT.** When deciding whether the defendant was actually under the influence of sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the defendant and the conditions and circumstances that surrounded him/her at the time of the act.

**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630. See, also, *State v. Wong* (1994), 95 Ohio App.3d 39.

(H) **DEADLY FORCE.** “Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.

**COMMENT**

R.C. 2901.01.

(I) **SUBSTANTIAL RISK.** “Substantial risk” means a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

7. **CONCLUSION WITHOUT INFERIOR DEGREE OFFENSE.** OJI-CR 425.01.

8. **CONCLUSION WITH INFERIOR DEGREE OFFENSE.**

(A) If you find that the state failed to prove beyond a reasonable doubt that the defendant

*(Use appropriate alternative)*

(1) purposely caused the (death of [insert name of victim]) (unlawful termination



of the pregnancy of [insert name of mother]), then you must find the defendant not guilty of murder.

(or)

(2) caused the death of (insert name of victim) as a proximate result of (committing) (attempting to commit) (insert name of offense of violence that is a felony of the first or second degree and not a violation of R.C. 2903.03 or 2903.04), then you must find the defendant not guilty of murder.

(B) If you find that the state proved beyond a reasonable doubt that the defendant

*(Use appropriate alternative)*

(1) purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), and you also find that the defendant failed to prove by the greater weight of the evidence that he/she knowingly acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of murder.

(or)

(2) caused the death of (insert name of victim) as a proximate result of (committing) (attempting to commit) (insert name of offense of violence that is a felony of the first or second degree and not a violation of R.C. 2903.03 or 2903.04), and you also find that the defendant failed to prove by the greater weight of the evidence that he/she knowingly acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of murder.

(C) If you find that the state proved beyond a reasonable doubt that the defendant

*(Use appropriate alternative)*

(1) purposely caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), but you also find that the defendant proved by the greater weight of the evidence that he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of voluntary manslaughter.

(or)

(2) caused the death of (insert name of victim) as a proximate result of (committing) (attempting to commit) (insert name of offense of violence that is a felony of the first or second degree and not a violation of R.C. 2903.03 or 2903.04), but you also find that the defendant proved by the greater weight of the

evidence that he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of voluntary manslaughter.

You may not sign more than one verdict form on this Count.

#### COMMENT

Drawn from *State v. Rhodes* (1992), 63 Ohio St.3d 613. Note that R.C. 2903.02(B) was enacted after the decision in *Rhodes*.

The Committee recommends that the judge read the appropriate verdict form with each alternative and instruct the jury that it may not sign more than one verdict form on this Count.

9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

10. SAMPLE VERDICT FORMS. OJI-CR 425.33.

**CR 503.03 Voluntary manslaughter R.C. 2903.03 (offenses committed on and after 9/6/96) [Rev. 1/20/07]**

#### COMMENT

This instruction should be used when the defendant is charged only with voluntary manslaughter, not murder or aggravated murder. *State v. Muscatello* (1978), 55 Ohio St.2d 201, holds that if the defendant is not charged with murder or aggravated murder but with voluntary manslaughter only, neither party is required to establish either sudden passion or sudden fit of rage. It is "presumed" that one or both of them are present.

1. The defendant is charged with voluntary manslaughter. Before you can find the defendant guilty of voluntary manslaughter, you must find that the state has proved beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant knowingly caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23.

4. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A)-(C).

5. CONCLUSION. OJI-CR 425.01.



6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.04 Involuntary manslaughter R.C. 2903.04 (offenses committed on and after 9/6/96 but before 3/23/00)**

1. The defendant is charged with involuntary manslaughter. Before you can find the defendant guilty you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant (*insert culpable mental state*) caused the (death of [*insert name of victim*]) (unlawful termination of the pregnancy of [*insert name of mother*]), as a proximate result of (committing) (attempting to commit) (*insert name of offense*).

**COMMENT**

The mental culpability is that required by the offense the defendant was committing or attempting to commit. *Stanley v. Turner* (6th Cir. 1993), 6 F.3d 399; *State v. Voland* (C.P. Clermont Co., 1999), 99 Ohio Misc.2d 61, 716 N.E.2d 299.

2. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

3. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A)–(C).

4. UNDERLYING OFFENSE. Before you can find that the defendant was (committing) (attempting to commit) (*insert name of applicable offense*) you must find beyond a reasonable doubt that the defendant (*describe each element of the applicable offense*).

**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases. The verdict must state whether the underlying offense was a felony or a misdemeanor.

5. ADDITIONAL FINDING:

SPECIAL FINDING. OJI-CR 425.25; R.C. 2903.04(D).

6. CONCLUSION. OJI-CR 425.01.

7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.04 Involuntary manslaughter R.C. 2903.04 (offenses committed on and after 3/23/00)**

1. The defendant is charged with involuntary manslaughter. Before you can find the defendant guilty you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant (*insert culpable mental state, if applicable*) caused the (death of

[insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]), as a proximate result of (committing) (attempting to commit)

(Use appropriate alternative)

(A) (insert name of felony).

(or)

(B) (insert name, or otherwise describe, the charged misdemeanor, regulatory offense, or minor misdemeanor other than a minor misdemeanor contained in R.C. Title 45 or in a municipal ordinance substantially equivalent thereto)

#### COMMENT

The mental culpability is that required by the offense the defendant was committing or attempting to commit. *Stanley v. Turner* (6th Cir. 1993), 6 F.3d 399; *State v. Voland* (C.P. Clermont Co., 1999), 99 Ohio Misc.2d 61, 716 N.E.2d 299. If the statute, regulation or ordinance does not specify a culpable mental state and indicates an intent to impose strict criminal liability, the Committee believes that under R.C. 2901.21(B), there is strict criminal liability.

2. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
3. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A)-(C).
4. UNDERLYING OFFENSE. Before you can find that the defendant was (committing) (attempting to commit) (insert name of applicable offense) you must find beyond a reasonable doubt that the defendant (describe each element of the applicable offense).

#### COMMENT

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases. The verdict must state whether the underlying offense was a felony or a misdemeanor.

5. ADDITIONAL FINDING:  
SPECIAL FINDING. OJI-CR 425.25; R.C. 2903.04(D).
6. CONCLUSION. OJI-CR 425.01.
7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

#### CR 503.041 Reckless homicide R.C. 2903.041

1. The defendant is charged with reckless homicide. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant



recklessly caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]).

2. CRIMINAL RECKLESSNESS. OJI-CR 417.17; R.C. 2901.22(C).
3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
4. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A)–(C).
5. CONCLUSION. OJI-CR 425.01.
6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.05 Negligent homicide R.C. 2903.05**

1. The defendant is charged with negligent homicide. Before you can find the defendant guilty you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant negligently caused the (death of [insert name of victim]) (unlawful termination of the pregnancy of [insert name of mother]) by means of a (deadly weapon) (dangerous ordnance).

**COMMENT**

Negligent homicide involving “the unlawful termination of another’s pregnancy” only applies to offenses committed on and after 9/6/96).

2. NEGLIGENTLY. OJI-CR 417.19; R.C. 2901.22(D).
3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
4. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A)–(C).
5. DEADLY WEAPON. “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

6. CAPABILITY OF DEADLY WEAPON. A deadly weapon is any instrument, device or thing which has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device or thing was designed or specially adapted for use as a weapon (such as a gun, billy club or brass knuckles), or it was possessed, carried or used in this case as a weapon. These are questions of fact for you to determine.

7. DANGEROUS ORDNANCE. R.C. 2923.11(K) and (L).

## 8. CONCLUSION. OJI-CR 425.01.

## 9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.06 Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter R.C. 2903.06 (offenses committed on or after 6/1/04) [Rev. 1-23-10]**

1. The defendant is charged with (aggravated vehicular homicide) (vehicular homicide) (vehicular manslaughter). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, while (operating) (participating in the operation of) a (motor vehicle) (motorcycle) (snowmobile) (locomotive) (watercraft) (aircraft), caused the (death of [*insert name of victim*]) (unlawful termination of the pregnancy of [*insert name of mother*])

(Use appropriate alternative)

(A)(1) as the proximate result of committing

(a) (*describe by name the violation of R.C. 4511.19[A] or a substantially equivalent municipal ordinance*).

(b) (*describe by name the violation of R.C. 1547.11[A] or a substantially equivalent municipal ordinance*).

(c) (*describe by name the violation of R.C. 4561.15[A][3] or a substantially equivalent municipal ordinance*).

#### COMMENT

The Committee believes that R.C. 2903.06(A)(1) imposes strict liability. R.C. 2901.21(B); *State v. Wac* (1981), 68 Ohio St.2d 84. The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

(or)

(A)(2) recklessly.

(or)

(A)(3) as the proximate result of committing, while (operating) (participating in the operation of) a (motor vehicle) (motorcycle) in a construction zone, a reckless operation offense if the person whose (death was caused) (pregnancy was unlawfully terminated) was in the construction zone at the time of the defendant's commission of the reckless operation offense in the construction zone where there were properly erected signs for the construction zone.



**COMMENT**

Drawn from R.C. 2903.06(A)(2)(b) and (F), 5501.27.

(or)

(A)(4) negligently.

(or)

(A)(5) as the proximate result of committing, while (operating) (participating in the operation of) a (motor vehicle) (motorcycle) in a construction zone, a speeding offense if the person whose (death was caused) (pregnancy was unlawfully terminated) was in the construction zone at the time of the defendant's commission of the speeding offense in the construction zone where there were properly erected warning signs for the construction zone.

(or)

(A)(6) as the proximate result of committing (*describe by name the minor misdemeanor violation of any provision of any section of R.C. Title 45 or of a substantially equivalent municipal ordinance*).

2. OPERATE. "Operate" means to cause or have caused movement.

**COMMENT**

Drawn from R.C. 4511.01.

For a discussion of what constitutes "participating in the operation" of a motor vehicle, see *State v. Hann* (1977), 55 Ohio App.2d 267.

3. MOTOR VEHICLE. R.C. 4511.01.
4. MOTORCYCLE. R.C. 4511.01.
5. SNOWMOBILE. "Snowmobile" means any self-propelled vehicle designed primarily for use on snow or ice and steered by skis, runners, or caterpillar treads.

**COMMENT**

R.C. 4519.01.

6. WATERCRAFT. R.C. 1547.01.
7. AIRCRAFT. "Aircraft" means any contrivance used or designed for navigation or flight in the air, excepting a parachute or other contrivance for such navigation used primarily as safety equipment.

**COMMENT**

R.C. 4561.01.

8. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
9. UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. R.C. 2903.09(A) and (C).
10. RECKLESSLY. OJI-CR 417.19; R.C. 2901.22(C).
11. CONSTRUCTION ZONE. "Construction zone" means that lane or portion of street or highway open to vehicular traffic and adjacent to a lane, berm, or shoulder of a street or highway within which lane, berm, or shoulder construction, reconstruction, resurfacing, or any other work of a repair or maintenance nature, including public utility work, is being conducted, commencing with the point where the first worker or piece of equipment is located and ending where the last worker or piece of equipment is located and the offense occurs during hours of actual work within the construction zone.

**COMMENT**

Drawn from R.C. 4511.98, 5501.27.

12. RECKLESS OPERATION OFFENSE. R.C. 2903.06(G)(1)(d).

**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

13. NEGLIGENTLY. OJI-CR 417.19; R.C. 2901.22(D).
14. SPEEDING OFFENSE. R.C. 2903.06(G)(1)(e).

**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

15. UNDERLYING OFFENSE. Before you can find that the defendant was committing (*insert name of applicable offense*), you must find beyond a reasonable doubt that the defendant committed (*describe each element of the applicable offense*).



**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

**16. ADDITIONAL FINDING(S):**

- (A) DRIVING UNDER SUSPENSION. OJI-CR 425.25; R.C. 2903.06(B).
- (B) PRIOR CONVICTION(S). OJI-CR 425.15; R.C. 2903.06(B).

**17. CONCLUSION. OJI-CR 425.01.****18. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.**

**CR 503.08 Aggravated vehicular assault; vehicular assault R.C. 2903.08**  
**(offenses committed on or after 6/1/04) [Rev. 1-23-10]**

1. The defendant is charged with (aggravated vehicular assault) (vehicular assault). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, while (operating) (participating in the operation of) a (motor vehicle) (motorcycle) (snowmobile) (locomotive) (watercraft) (aircraft), caused serious physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*])

(Use appropriate alternative)

## (A)(1) as the proximate result of committing

- (a) (*describe by name the violation of R.C. 4511.19[A] or a substantially equivalent municipal ordinance*).
- (b) (*describe by name the violation of R.C. 1547.11[A] or a substantially equivalent municipal ordinance*).
- (c) (*describe by name the violation of R.C. 4561.15[A][3] or a substantially equivalent municipal ordinance*).

**COMMENT**

The Committee believes that R.C. 2903.08(A)(1) imposes strict liability. R.C. 2901.21(B); *State v. Wac* (1981), 68 Ohio St.2d 84. The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

(or)

## (A)(2) as the proximate result of committing, while (operating) (participating in the

operation of) a (motor vehicle) (motorcycle) in a construction zone, a reckless operation offense if the person to (whom) (whose unborn) the serious physical harm was caused was in the construction zone at the time of the defendant's commission of the reckless operation offense in the construction zone where there were properly erected signs for the construction zone.

**COMMENT**

Drawn from R.C. 2903.08(A)(2)(a) and (F), 5501.27.

(or)

(A)(3) recklessly.

(or)

(A)(4) as the proximate result of committing, while (operating) (participating in the operation of) a (motor vehicle) (motorcycle) in a construction zone, a speeding offense if the person to (whom) (whose unborn) the serious physical harm was caused was in the construction zone at the time of the defendant's commission of the speeding offense in the construction zone where there were properly erected signs for the construction zone.

2. OPERATE. "Operate" means to cause or have caused movement.

**COMMENT**

Drawn from R.C. 4511.01.

For a discussion of what constitutes "participating in the operation" of a motor vehicle, see *State v. Hann* (1977), 55 Ohio App.2d 267.

3. MOTOR VEHICLE. R.C. 4511.01.

4. MOTORCYCLE. R.C. 4511.01.

5. SNOWMOBILE. "Snowmobile" means any self-propelled vehicle designed primarily for use on snow or ice and steered by skis, runners, or caterpillar treads.

**COMMENT**

R.C. 4519.01.

6. WATERCRAFT. R.C. 1547.01.

7. AIRCRAFT. "Aircraft" means any contrivance used or designed for navigation or flight in the air, excepting a parachute or other contrivance for such navigation used primarily as safety equipment.



**COMMENT**

R.C. 4561.01.

8. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

9. SERIOUS PHYSICAL HARM TO PERSONS. R.C. 2901.01.

10. PHYSICAL HARM. “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

11. UNBORN. “Unborn” means a member of the human species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.

**COMMENT**

Drawn from R.C. 2903.09(B).

12. CONSTRUCTION ZONE. “Construction zone” means that lane or portion of street or highway open to vehicular traffic and adjacent to a lane, berm, or shoulder of a street or highway within which lane, berm, or shoulder construction, reconstruction, resurfacing, or any other work of a repair or maintenance nature, including public utility work, is being conducted, commencing with the point where the first worker or piece of equipment is located and ending where the last worker or piece of equipment is located and the offense occurs during hours of actual work within the construction zone.

**COMMENT**

Drawn from R.C. 4511.98, 5501.27.

13. RECKLESS OPERATION OFFENSE. R.C. 2903.08(F)(4), 2903.06.

**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

14. RECKLESSLY. OJI-CR 417.19; R.C. 2901.22(C).  
15. SPEEDING OFFENSE. R.C. 2903.08(F)(4), 2903.06.

**COMMENT**

The court must instruct the jury on the elements of the applicable offense, together with the meaning of pertinent words and phrases.

**16. ADDITIONAL FINDING(S):**

- (A) DRIVING UNDER SUSPENSION. OJI-CR 425.25; R.C. 2903.08(B).  
(B) PRIOR CONVICTION(S). OJI-CR 425.15; R.C. 2903.08(B).

**17. CONCLUSION. OJI-CR 425.01.****18. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 503.11(A) Felonious assault R.C. 2903.11(A) (offenses committed on and after 9/6/96 but before 3/14/07) [Rev. 12-11-10]**

1. The defendant is charged with felonious assault. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly

*(Use appropriate alternative)*

(A)(1) caused serious physical harm to *(insert name of victim)* (the unborn of *[insert name of mother]*).

*(or)*

(A)(2) caused or attempted to cause physical harm to *(insert name of victim)* (the unborn of *[insert name of mother]*) by means of a (deadly weapon) (dangerous ordnance).

**COMMENT**

Felonious assault with a deadly weapon is not a lesser included offense of attempted murder. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).  
3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.  
4. SERIOUS PHYSICAL HARM. R.C. 2901.01.  
5. PHYSICAL HARM. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.



**COMMENT**

R.C. 2901.01.

6. **ATTEMPT.** An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in physical harm.

**COMMENT**

Drawn from R.C. 2923.02.

7. **DEADLY WEAPON.** “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

8. **CAPABILITY OF DEADLY WEAPON.** A deadly weapon is any instrument, device, or thing that has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon (such as a gun, billy club, or brass knuckles), or it was possessed, carried, or used in this case as a weapon. These are questions of fact for you to decide.

**COMMENT**

Where the accused pointed a gun at another, knowing it to be unloaded, making an attempt to pull the trigger or use the gun as a deadly weapon, the accused may be found guilty of felonious assault. *State v. Tate* (1978), 54 Ohio St.2d 444.

The act of pointing a deadly weapon at another coupled with a threat, which indicates an intention to use such weapon, is sufficient evidence to convict a defendant of the offense of felonious assault. *State v. Green* (1991), 58 Ohio St.3d 239.

9. **DANGEROUS ORDNANCE.** R.C. 2923.11(K) and (L).

10. **ANOTHER’S UNBORN.** “Another’s unborn” means a member of the (human) (*homo sapiens*) species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.

**COMMENT**

Drawn from R.C. 2903.09(B).

**11. INFERIOR DEGREE OFFENSE.****COMMENT**

See *State v. Evans*, 122 Ohio St.3d 381, 2009-Ohio-2974, which clarifies the test set forth in *State v. Deem* (1988), 40 Ohio St.3d 205.

(A) GENERAL. OJI-CR 417.27.

(B) SUDDEN PASSION OR SUDDEN FIT OF RAGE. The defendant claims that at the time of the offense, he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by (*insert name of victim*) that was reasonably sufficient to incite the defendant into using deadly force.

(C) KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

(D) CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

(E) SUDDEN PASSION, SUDDEN FIT OF RAGE. "Under the influence of sudden passion or in a sudden fit of rage" means there is serious provocation occasioned by the victim that is reasonably sufficient to incite a person into using deadly force; it is an act done in the heat of blood without time to reflect or for passions to cool.

(F) SERIOUS PROVOCATION. For provocation to be reasonably sufficient to bring on sudden passion or a sudden fit of rage, you must decide that the provocation was sufficient to arouse the passions of an ordinary person beyond the power of his/her control.

**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630. See, also, *State v. Wong* (1994), 95 Ohio App.3d 39.

(G) EMOTIONAL STATE OF DEFENDANT. When deciding whether the defendant was actually under the influence of sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the defendant and the conditions and circumstances that surrounded him/her at the time of the act.



**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630. See, also, *State v. Wong* (1994), 95 Ohio App.3d 39.

(H) **DEADLY FORCE.** “Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.

**COMMENT**

R.C. 2901.01(A)(2).

**12. ADDITIONAL FINDINGS:**

(A) **PEACE OFFICER AS VICTIM.** OJI-CR 425.25; R.C. 2903.11(B) (offenses committed on and after 9/6/96 but before 3/14/07).

**COMMENT**

R.C. 2903.11(B) was renumbered to R.C. 2903.11(D) effective 3/23/00.

(B) **SERIOUS PHYSICAL HARM TO A PEACE OFFICER.** OJI-CR 425.25; R.C. 2903.11(B) (offenses committed on and after 2/3/00 but before 3/14/07).

**COMMENT**

R.C. 2903.11(B) was renumbered to R.C. 2903.11(D) effective 3/23/00.

(C) **PEACE OFFICER.** R.C. 2935.01.

**COMMENT**

On and after 3/18/99 but before 6/30/99, “peace officer” included an “employee of the department of natural resources who [was] a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13 of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code; individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code.”

On and after 6/30/99 but before 5/17/00, "peace officer" included an "enforcement agent of the department of public safety designated under section 5502.14 of the Revised Code," but "Peace Officer" did not include a "liquor control investigator or food stamp trafficking agent."

On and after 5/17/00 but before 3/22/01, "peace officer" included a "special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code."

On and after 3/22/01 but before 8/29/02, "peace officer" included "the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code; and an assistant house sergeant at arms."

On and after 8/29/02 but before 3/14/03, "peace officer" included an "officer or employee of the bureau of criminal identification and investigation established pursuant to section 109.51 of the Revised Code who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program and who [was] providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to section 109.54 or 109.541 of the Revised Code."

On and after 3/14/03 but before 3/19/03, "peace officer" included a "veteran's home police officer appointed under section 5907.02 of the Revised Code."

On and after 3/19/03 but before 9/23/08, "peace officer" included "a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that [was] required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended."

(D) NATURAL RESOURCES LAW ENFORCEMENT STAFF OFFICER. R.C. 1501.013 (offenses committed on and after 3/18/99).

(E) FOREST OFFICER. R.C. 1503.29 (offenses committed on and after 3/18/99).

(F) PRESERVE OFFICER. R.C. 1517.10 (offenses committed on and after 3/18/99).

(G) WILDLIFE OFFICER. R.C. 1531.13 (offenses committed on and after 3/18/99).

(H) PARK OFFICER. R.C. 1541.10 (offenses committed on and after 3/18/99).

(I) STATE WATERCRAFT OFFICER. R.C. 1547.521 (offenses committed on and after 3/18/99).



(J) INDIVIDUAL DESIGNATED TO PERFORM LAW ENFORCEMENT DUTIES. R.C. 511.232, 1545.13, 6101.75 (offenses committed on and after 3/18/99).

(K) ENFORCEMENT AGENT OF THE DEPARTMENT OF PUBLIC SAFETY. R.C. 5502.14 (offenses committed on and after 6/30/99).

(L) SPECIAL POLICE OFFICER EMPLOYED BY A PORT AUTHORITY. R.C. 4582.04, 4582.28 (offenses committed on and after 5/17/00).

(M) THE HOUSE SERGEANT AT ARMS. R.C. 101.311 (offenses committed on and after 3/22/01).

(N) OFFICER OR EMPLOYEE OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 109.51, 109.54, 109.541, 109.542 (offenses committed on and after 8/29/02).

(O) VETERAN'S HOME POLICE OFFICER. R.C. 5907.02 (offenses committed on and after 3/14/03).

(P) SPECIAL POLICE OFFICER EMPLOYED BY A MUNICIPAL CORPORATION AT A MUNICIPAL AIRPORT OR OTHER MUNICIPAL AIR NAVIGATION FACILITY. 14 C.F.R. 119.3; 49 C.F.R. 1542, 1544 (offenses committed on and after 3/19/03).

(Q) SERIOUS PHYSICAL HARM. R.C. 2901.01.

(R) PHYSICAL HARM. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

13. CONCLUSION WITHOUT INFERIOR DEGREE OFFENSE. OJI-CR 425.01.

14. CONCLUSION WITH INFERIOR DEGREE OFFENSE.

You may not sign more than one verdict form on this Count.

(A) If you find that the state failed to prove beyond a reasonable doubt that the defendant knowingly (caused serious physical harm to *[insert name of victim]*) (caused or attempted to cause physical harm to *[insert name of victim]*) by means of a deadly weapon or dangerous ordnance), then you must find the defendant not guilty.

(B) If you find that the state proved beyond a reasonable doubt that the defendant knowingly (caused serious physical harm to *[insert name of victim]*) (caused or attempted to cause physical harm to *[insert name of victim]*) by means of a deadly weapon or dangerous ordnance), and you find that the defendant failed to prove by the greater weight of the evidence that he/she acted while he/she was under the influence of sudden passion or in a sudden fit of rage, either of which was brought

on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of felonious assault.

(C) If you find that the state proved beyond a reasonable doubt that the defendant knowingly (caused serious physical harm to [insert name of victim]) (caused or attempted to cause physical harm to [insert name of victim] by means of a deadly weapon or dangerous ordnance), but you also find that the defendant proved by the greater weight of the evidence that he/she acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of aggravated assault.

#### COMMENT

Drawn from *State v. Deem* (1988), 40 Ohio St.3d 205.

The Committee recommends that the judge read the appropriate verdict form with each alternative and instruct the jury that it may not sign more than one verdict form on this Count.

15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

16. SAMPLE VERDICT FORMS. OJI-CR 425.33.

#### **CR 503.11(A) Felonious assault R.C. 2903.11(A) (offenses committed on and after 3/14/07) [Rev. 12-11-10]**

1. The defendant is charged with felonious assault. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly

(Use appropriate alternative)

(A)(1) caused serious physical harm to (insert name of victim) (the unborn of [insert name of mother]).

(or)

(A)(2) caused or attempted to cause physical harm to (insert name of victim) (the unborn of [insert name of mother]) by means of a (deadly weapon) (dangerous ordnance).

#### COMMENT

Felonious assault with a deadly weapon is not a lesser included offense of



attempted murder. *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
4. SERIOUS PHYSICAL HARM. R.C. 2901.01.
5. PHYSICAL HARM. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

6. ATTEMPT. An "attempt" occurs when a person knowingly engages in conduct that, if successful, would result in physical harm.

**COMMENT**

Drawn from R.C. 2923.02.

7. DEADLY WEAPON. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

8. CAPABILITY OF DEADLY WEAPON. A deadly weapon is any instrument, device, or thing that has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon (such as a gun, billy club, or brass knuckles), or it was possessed, carried, or used in this case as a weapon. These are questions of fact for you to decide.

**COMMENT**

Where the accused pointed a gun at another, knowing it to be unloaded, making an attempt to pull the trigger or use the gun as a deadly weapon, the accused may be found guilty of felonious assault. *State v. Tate* (1978), 54 Ohio St.2d 444.

The act of pointing a deadly weapon at another coupled with a threat, which indicates an intention to use such weapon, is sufficient evidence to convict a

defendant of the offense of felonious assault. *State v. Green* (1991), 58 Ohio St.3d 239.

9. DANGEROUS ORDNANCE. R.C. 2923.11(K) and (L).

10. ANOTHER'S UNBORN. "Another's unborn" means a member of the (human) (*homo sapiens*) species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.

COMMENT

Drawn from R.C. 2903.09(B).

11. INFERIOR DEGREE OFFENSE.

COMMENT

See *State v. Evans*, 122 Ohio St.3d 381, 2009-Ohio-2974, which clarifies the test set forth in *State v. Deem* (1988), 40 Ohio St.3d 205.

(A) GENERAL. OJI-CR 417.27.

(B) SUDDEN PASSION OR SUDDEN FIT OF RAGE. The defendant claims that at the time of the offense, he/she acted knowingly while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by (*insert name of victim*) that was reasonably sufficient to incite the defendant into using deadly force.

(C) KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

(D) CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

(E) SUDDEN PASSION, SUDDEN FIT OF RAGE. "Under the influence of sudden passion or in a sudden fit of rage" means there is serious provocation occasioned by the victim that is reasonably sufficient to incite a person into using deadly force; it is an act done in the heat of blood without time to reflect or for passions to cool.

(F) SERIOUS PROVOCATION. For provocation to be reasonably sufficient to bring on sudden passion or a sudden fit of rage, you must decide that the provocation was sufficient to arouse the passions of an ordinary person beyond the power of his/her control.

COMMENT

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630. See, also, *State v. Wong*



(1994), 95 Ohio App.3d 39.

(G) **EMOTIONAL STATE OF DEFENDANT.** When deciding whether the defendant was actually under the influence of sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the defendant and the conditions and circumstances that surrounded him/her at the time of the act.

**COMMENT**

Drawn from *State v. Shane* (1992), 63 Ohio St.3d 630. See, also, *State v. Wong* (1994), 95 Ohio App.3d 39.

(H) **DEADLY FORCE.** “Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.

**COMMENT**

R.C. 2901.01.

(I) **SUBSTANTIAL RISK.** “Substantial risk” means a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

**12. ADDITIONAL FINDING(S):**

(A) **PEACE OFFICER AS VICTIM.** OJI-CR 425.25; R.C. 2903.11(D) (offenses committed on and after 3/14/07).

**COMMENT**

R.C. 2903.11(D) was renumbered to R.C. 2903.11(D)(1) effective 4/4/07, and then R.C. 2903.11(D)(1) was renumbered to R.C. 2903.11(D)(1)(a) effective 4/7/09).

(B) **INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION AS VICTIM.** OJI-CR 425.25; R.C. 2903.11(D) (offenses committed on and after 3/14/07).

**COMMENT**

R.C. 2903.11(D) was renumbered to R.C. 2903.11(D)(1) effective 4/4/07, and then R.C. 2903.11(D)(1) was renumbered to R.C. 2903.11(D)(1)(a) effective 4/7/09.

(C) **SERIOUS PHYSICAL HARM TO A PEACE OFFICER.** OJI-CR 425.25; R.C. 2903.11(D) (offenses committed on and after 3/14/07).

**COMMENT**

R.C. 2903.11(D) was renumbered to R.C. 2903.11(D)(1) effective 4/4/07, and then R.C. 2903.11(D)(1) was renumbered to R.C. 2903.11(D)(1)(b) effective 4/7/09.

(D) **SERIOUS PHYSICAL HARM TO AN INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION.** OJI-CR 425.25; R.C. 2903.11(D) (offenses committed on and after 3/14/07).

**COMMENT**

R.C. 2903.11(D) was renumbered to R.C. 2903.11(D)(1) effective 4/4/07, and then R.C. 2903.11(D)(1) was renumbered to R.C. 2903.11(D)(1)(b) effective 4/7/09.

(E) **PEACE OFFICER.** R.C. 2935.01.

**COMMENT**

On and after 9/23/08, "peace officer" includes "a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code."

(F) **NATURAL RESOURCES LAW ENFORCEMENT STAFF OFFICER.** R.C. 1501.013 (offenses committed on and after 3/18/99).

(G) **FOREST OFFICER.** R.C. 1503.29 (offenses committed on and after 3/18/99).

(H) **PRESERVE OFFICER.** R.C. 1517.10 (offenses committed on and after 3/18/99).

(I) **WILDLIFE OFFICER.** R.C. 1531.13 (offenses committed on and after 3/18/99).

(J) **PARK OFFICER.** R.C. 1541.10 (offenses committed on and after 3/18/99).



- (K) STATE WATERCRAFT OFFICER. R.C. 1547.521 (offenses committed on and after 3/18/99).
- (L) INDIVIDUAL DESIGNATED TO PERFORM LAW ENFORCEMENT DUTIES. R.C. 511.232, 1545.13, 6101.75 (offenses committed on and after 3/18/99).
- (M) ENFORCEMENT AGENT OF THE DEPARTMENT OF PUBLIC SAFETY. R.C. 5502.14 (offenses committed on and after 6/30/99).
- (N) SPECIAL POLICE OFFICER EMPLOYED BY A PORT AUTHORITY. R.C. 4582.04, 4582.28 (offenses committed on and after 5/17/00).
- (O) THE HOUSE OF REPRESENTATIVES SERGEANT AT ARMS. R.C. 101.311 (offenses committed on and after 3/22/01).
- (P) OFFICER OR EMPLOYEE OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 109.51, 109.54, 109.541, 109.542 (offenses committed on and after 8/29/02).
- (Q) VETERAN'S HOME POLICE OFFICER. R.C. 5907.02 (offenses committed on and after 3/14/03).
- (R) SPECIAL POLICE OFFICER EMPLOYED BY A MUNICIPAL CORPORATION AT A MUNICIPAL AIRPORT OR OTHER MUNICIPAL AIR NAVIGATION FACILITY. 14 C.F.R. 119.3; 49 C.F.R. 1542, 1544 (offenses committed on and after 3/19/03).
- (S) STATE FIRE MARSHALL LAW ENFORCEMENT OFFICER. R.C. 109.71 (offenses committed on and after 9/23/08).
- (T) INVESTIGATOR. R.C. 2903.11(E)(5), 109.541 (offenses committed on and after 3/14/07).
- (U) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 2903.11(E)(4), 109.541 (offenses committed on and after 3/14/07).
- (V) SERIOUS PHYSICAL HARM. R.C. 2901.01.
- (W) PHYSICAL HARM. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

13. CONCLUSION WITHOUT INFERIOR DEGREE OFFENSE. OJI-CR 425.01.
14. CONCLUSION WITH INFERIOR DEGREE OFFENSE.

You may not sign more than one verdict form on this Count.

- (A) If you find that the state failed to prove beyond a reasonable doubt that the

defendant knowingly (caused serious physical harm to [insert name of victim]) (caused or attempted to cause physical harm to [insert name of victim] by means of a deadly weapon or dangerous ordnance), then you must find the defendant not guilty.

(B) If you find that the state proved beyond a reasonable doubt that the defendant knowingly (caused serious physical harm to [insert name of victim]) (caused or attempted to cause physical harm to [insert name of victim] by means of a deadly weapon or dangerous ordnance), and you find that the defendant failed to prove by the greater weight of the evidence that he/she acted while he/she was under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of felonious assault.

(C) If you find that the state proved beyond a reasonable doubt that the defendant knowingly (caused serious physical harm to [insert name of victim]) (caused or attempted to cause physical harm to [insert name of victim] by means of a deadly weapon or dangerous ordnance), but you also find that the defendant proved by the greater weight of the evidence that he/she acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of aggravated assault.

#### COMMENT

Drawn from *State v. Deem* (1988), 40 Ohio St.3d 205.

The Committee recommends that the judge read the appropriate verdict form with each alternative and instruct the jury that it may not sign more than one verdict form on this Count.

15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

16. SAMPLE VERDICT FORMS. OJI-CR 425.33.

**CR 503.11(B) Felonious assault R.C. 2903.11(B) (offenses committed on and after 3/23/00) [Rev. 12-11-10]**

#### COMMENT

Effective 3/23/00, R.C. 2903.11 was amended to add a new offense under subsection (B). Offenses charged under subsection (A) of R.C. 2903.11 are not affected by the amendment.



1. The defendant is charged with felonious assault. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, with knowledge that he/she had tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome (AIDS), knowingly engaged in sexual conduct with (*insert name of victim*)

(*Use appropriate alternative*)

(B)(1) without disclosing that knowledge to him/her prior to engaging in sexual conduct.

(*or*)

(B)(2) whom the defendant knew or had reasonable cause to believe lacked the mental capacity to appreciate the significance of the knowledge that the defendant had tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome (AIDS).

(*or*)

(B)(3) who was under eighteen years of age and was not the spouse of the defendant.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. SEXUAL CONDUCT.

#### COMMENT

Effective 8/3/06, the definition of “sexual conduct” in R.C. 2907.01 was amended to change the word “cavity” to “opening.”

As a result of this amendment, two definitions of “sexual conduct” have potential application depending upon when the offense occurred. One definition is for offenses occurring on and after 3/23/00, but before 8/3/06, and a second definition is for offenses occurring on and after 8/3/06.

(*Use appropriate alternative*)

(A) SEXUAL CONDUCT (offenses committed on and after 3/23/00 but before 8/3/06). “Sexual conduct” means (vaginal intercourse between a male and female) ([anal intercourse] [fellatio] [cunnilingus] between persons regardless of sex) (without privilege to do so, the insertion, however slight, of any [part of the body into the vaginal or anal cavity of another] [instrument, apparatus, or other object into the vaginal or anal cavity of another, and the defendant knew at the time of the insertion that the instrument, apparatus, or other object carried the defendant’s bodily fluid]). (Penetration, however slight, is sufficient to complete vaginal or anal intercourse.)

#### COMMENT

Drawn from R.C. 2907.01 as it existed on and after March 23, 2000, but before

August 3, 2006, and R.C. 2903.11(E)(3) effective March 23, 2000. R.C. 2903.11(E)(3) was renumbered to R.C. 2903.11(E)(4), effective April 4, 2007. The Committee believes that there is no privilege to insert an instrument, apparatus, or other object unless the victim knew, at the time of the insertion, that it carries the defendant's bodily fluid.

(or)

(B) **SEXUAL CONDUCT** (offenses committed on and after 8/3/06). "Sexual conduct" means (vaginal intercourse between a male and female) ([anal intercourse] [fellatio] [cunnilingus] between persons regardless of sex) (without privilege to do so, the insertion, however slight, of any [part of the body into the vaginal or anal opening of another] [instrument, apparatus, or other object into the vaginal or anal opening of another, and the defendant knew at the time of the insertion that the instrument, apparatus, or other object carried the defendant's bodily fluid]). (Penetration, however slight, is sufficient to complete vaginal or anal intercourse.)

#### COMMENT

Drawn from R.C. 2907.01 as amended effective August 3, 2006, and R.C. 2903.11(E)(3) effective March 23, 2000. R.C. 2903.11(E)(3) was renumbered to R.C. 2903.11(E)(4), effective April 4, 2007. The Committee believes that there is no privilege to insert an instrument, apparatus, or other object unless the victim knew, at the time of the insertion, that it carries the defendant's bodily fluid.

4. **VAGINAL INTERCOURSE.** "Vaginal intercourse" means penetration of the penis into the vagina.
5. **ANAL INTERCOURSE.** "Anal intercourse" means penetration of the penis into the anal opening of a man or woman.
6. **FELLATIO.** "Fellatio" means the practice of obtaining sexual satisfaction by oral stimulation of the penis.

#### COMMENT

*In re M.D.*, 38 Ohio St.3d 149 (1988).

7. **CUNNILINGUS.** "Cunnilingus" means a sexual act committed with the mouth and the female sex organ.
8. **SPOUSE.** R.C. 2907.01.
9. **CAUSATION.** OJI-CR 417.23, OJI-CR 417.25.
10. **PHYSICAL HARM.** "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.



**COMMENT**

R.C. 2901.01.

11. CONCLUSION. OJI-CR 425.01.

12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.12 Aggravated assault R.C. 2903.12 (offenses committed on and after 2/3/00 but before 3/14/07) [Rev. 12-11-10]**

**COMMENT**

This instruction should be used when the defendant is charged only with aggravated assault, not with felonious assault.

The Committee believes that the holding in *State v. Rhodes* (1992), 63 Ohio St.3d 613, applies by analogy in a case where the defendant is not charged with felonious assault but rather with aggravated assault (only). Neither party is required to establish either of the mitigating circumstances of sudden passion or sudden fit of rage. It is "presumed" that these mitigating circumstances are present.

1. The defendant is charged with aggravated assault. Before you can find the defendant guilty of aggravated assault, you must find that the state has proved beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly

(Use appropriate alternative)

(A)(1) caused serious physical harm to (insert name of victim) (the unborn of [insert name of mother]).

(or)

(A)(2) caused or attempted to cause physical harm to (insert name of victim) (the unborn of [insert name of mother]) by means of (a deadly weapon) (dangerous ordnance).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23.

4. SERIOUS PHYSICAL HARM TO PERSONS. OJI-CR 503.11(A) § 4; R.C. 2901.01.

5. SUBSTANTIAL RISK. "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

6. **PHYSICAL HARM.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

7. **ATTEMPT.** An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in physical harm.

**COMMENT**

Drawn from R.C. 2923.02.

8. **DEADLY WEAPON.** “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

9. **CAPABILITY OF DEADLY WEAPON.** A deadly weapon is any instrument, device, or thing that has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon (such as a gun, billy club, or brass knuckles), or it was possessed, carried, or used in this case as a weapon. These are questions of fact for you to decide.

**COMMENT**

Where the accused pointed a gun at another, knowing it to be unloaded, making an attempt to pull the trigger or use the gun as a deadly weapon, the accused may be found guilty of felonious assault. *State v. Tate* (1978), 54 Ohio St. 2d 444.

The act of pointing a deadly weapon at another coupled with a threat, which indicates an intention to use such weapon, is sufficient evidence to convict a defendant of the offense of felonious assault. *State v. Green* (1991), 58 Ohio St. 3d



239.

10. DANGEROUS ORDNANCE. R.C. 2923.11(K) and (L).

11. ANOTHER'S UNBORN. "Another's unborn" means a member of the (human) (homo sapiens) species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.

**COMMENT**

Drawn from R.C. 2903.09(B).

12. DEFENSES. OJI-CR Chapter 421.

13. ADDITIONAL FINDING(S):

(A) PRIOR CONVICTION. OJI-CR 425.15.

(B) PHYSICAL HARM OR THREAT. OJI-CR 425.21.

(C) FIREARM SPECIFICATION. OJI-CR 417.41.

(D) SPECIAL FINDING (PEACE OFFICER). OJI-CR 425.25.

(E) PEACE OFFICER AS VICTIM. OJI-CR 425.25; R.C. 2903.12(B) (offenses committed on and after 3/23/00).

(F) SERIOUS PHYSICAL HARM TO A PEACE OFFICER. OJI-CR 425.25; R.C. 2903.12(B) (offenses committed on and after 3/23/00).

(G) PEACE OFFICER. OJI-CR 425.25; R.C. 2935.01(B).

**COMMENT**

On and after 5/17/00 but before 3/22/01, "peace officer" included a "special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code."

On and after 3/22/01 but before 8/29/02, "peace officer" included "the house sergeant at arms if the house sergeant at arms [had] arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code; and an assistant house sergeant at arms."

On and after 8/29/02 but before 3/14/03, "peace officer" included an "officer or employee of the bureau of criminal identification and investigation established pursuant to section 109.51 of the Revised Code who [had] been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program and who [was] providing assistance upon request to a law enforcement

officer or emergency assistance to a peace officer pursuant to section 109.54 or 109.541 of the Revised Code.”

On and after 3/14/03 but before 3/19/03, “peace officer” included a “veteran’s home police officer appointed under section 5907.02 of the Revised Code.”

On and after 3/19/03 but before 9/23/08, “peace officer” included “a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that [had] scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that [was] required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended.”

(H) NATURAL RESOURCES LAW ENFORCEMENT STAFF OFFICER. R.C. 1501.013 (offenses committed on and after 3/18/99).

(I) FOREST OFFICER. R.C. 1503.29 (offenses committed on and after 3/18/99).

(J) PRESERVE OFFICER. R.C. 1517.10 (offenses committed on and after 3/18/99).

(K) WILDLIFE OFFICER. R.C. 1531.13 (offenses committed on and after 3/18/99).

(L) PARK OFFICER. R.C. 1541.10 (offenses committed on and after 3/18/99).

(M) STATE WATERCRAFT OFFICER. R.C. 1547.521 (offenses committed on and after 3/18/99).

(N) INDIVIDUAL DESIGNATED TO PERFORM LAW ENFORCEMENT DUTIES. R.C. 511.232, 1545.13, 6101.75 (offenses committed on and after 3/18/99).

(O) ENFORCEMENT AGENT OF THE DEPARTMENT OF PUBLIC SAFETY. R.C. 5502.14 (offenses committed on and after 6/30/99).

(P) SPECIAL POLICE OFFICER EMPLOYED BY A PORT AUTHORITY. R.C. 4582.04, 4582.28 (offenses committed on and after 5/17/00).

(Q) THE HOUSE SERGEANT AT ARMS. R.C. 101.311 (offenses committed on and after 3/22/01).

(R) OFFICER OR EMPLOYEE OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 109.51, 109.54, 109.541, 109.542 (offenses committed on and after 8/29/02).

(S) VETERAN’S HOME POLICE OFFICER. R.C. 5907.02 (offenses committed on and after 3/14/03).

(T) SPECIAL POLICE OFFICER EMPLOYED BY A MUNICIPAL CORPORATION AT A MUNICIPAL AIRPORT OR OTHER MUNICIPAL AIR NAVIGATION FACILITY. 14 C.F.R. 119.3; 49 C.F.R. 1542, 1544 (offenses committed on and after 3/19/03).



(U) SERIOUS PHYSICAL HARM. R.C. 2901.01(A)(5).

14. CONCLUSION. OJI-CR 425.01.

15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.12 Aggravated assault R.C. 2903.12 (offenses committed on and after 3/14/07) [Rev. 12-11-10]**

**COMMENT**

This instruction should be used when the defendant is charged only with aggravated assault, not with felonious assault.

The Committee believes that the holding in *State v. Rhodes* (1992), 63 Ohio St.3d 613, applies by analogy in a case where the defendant is not charged with felonious assault but rather with aggravated assault (only). Neither party is required to establish either of the mitigating circumstances of sudden passion or sudden fit of rage. It is “presumed” that these mitigating circumstances are present.

1. The defendant is charged with aggravated assault. Before you can find the defendant guilty of aggravated assault, you must find that the state has proved beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant knowingly

(*Use appropriate alternative*)

(A) caused serious physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*]).

(*or*)

(B) caused or attempted to cause physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*]) by means of a (deadly weapon) (dangerous ordnance).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23.

4. SERIOUS PHYSICAL HARM TO PERSONS. OJI-CR 503.11(A) § 4; R.C. 2901.01.

5. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

6. **PHYSICAL HARM.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

7. **ATTEMPT.** An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in physical harm.

**COMMENT**

Drawn from R.C. 2923.02.

8. **DEADLY WEAPON.** “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

9. **CAPABILITY OF DEADLY WEAPON.** A deadly weapon is any instrument, device, or thing that has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon (such as a gun, billy club, or brass knuckles), or it was possessed, carried, or used in this case as a weapon. These are questions of fact for you to decide.

**COMMENT**

Where the accused pointed a gun at another, knowing it to be unloaded, making an attempt to pull the trigger or use the gun as a deadly weapon, the accused may be found guilty of felonious assault. *State v. Tate* (1978), 54 Ohio St. 2d 444.

The act of pointing a deadly weapon at another coupled with a threat, which indicates an intention to use such weapon, is sufficient evidence to convict a defendant of the offense of felonious assault. *State v. Green* (1991), 58 Ohio St. 3d 239.

10. **DANGEROUS ORDNANCE.** R.C. 2923.11(K) and (L).

11. **ANOTHER’S UNBORN.** “Another’s unborn” means a member of the (human) (*homo sapiens*) species, who is or was carried in the womb of another, during a period



that begins with fertilization and continues unless and until live birth occurs.

**COMMENT**

Drawn from R.C. 2903.09(B).

12. DEFENSES. OJI-CR Chapter 421.

13. ADDITIONAL FINDING(S):

(A) PRIOR CONVICTION. OJI-CR 425.15.

(B) PHYSICAL HARM OR THREAT. OJI-CR 425.21.

(C) FIREARM SPECIFICATION. OJI-CR 417.41.

(D) SPECIAL FINDING (PEACE OFFICER). OJI-CR 425.25.

(E) PEACE OFFICER AS VICTIM. OJI-CR 425.25; R.C. 2903.12(B) (offenses committed on and after 3/23/00).

(F) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION AS VICTIM. OJI-CR 425.25; R.C. 2903.12(B) (offenses committed on and after 3/14/07).

(G) SERIOUS PHYSICAL HARM TO A PEACE OFFICER. OJI-CR 425.25; R.C. 2903.12(B) (offenses committed on and after 3/23/00).

(H) SERIOUS PHYSICAL HARM TO AN INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. OJI-CR 425.25; R.C. 2903.12(B) (offenses committed on and after 3/14/07).

(I) PEACE OFFICER. OJI-CR 425.25; R.C. 2935.01.

**COMMENT**

On and after 9/23/08, "peace officer" includes "a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code."

(J) NATURAL RESOURCES LAW ENFORCEMENT STAFF OFFICER. R.C. 1501.013 (offenses committed on and after 3/18/99).

(K) FOREST OFFICER. R.C. 1503.29 (offenses committed on and after 3/18/99).

(L) PRESERVE OFFICER. R.C. 1517.10 (offenses committed on and after 3/18/99).

(M) WILDLIFE OFFICER. R.C. 1531.13 (offenses committed on and after 3/18/99).

(N) PARK OFFICER. R.C. 1541.10 (offenses committed on and after 3/18/99).

(O) STATE WATERCRAFT OFFICER. R.C. 1547.521 (offenses committed on and after 3/18/99).

(P) INDIVIDUAL DESIGNATED TO PERFORM LAW ENFORCEMENT DUTIES. R.C. 511.232, 1545.13 and 6101.75 (offenses committed on and after 3/18/99).

(Q) ENFORCEMENT AGENT OF THE DEPARTMENT OF PUBLIC SAFETY. R.C. 5502.14 (offenses committed on and after 6/30/99).

(R) SPECIAL POLICE OFFICER EMPLOYED BY A PORT AUTHORITY. R.C. 4582.04, 4582.28 (offenses committed on and after 5/17/00).

(S) THE HOUSE OF REPRESENTATIVES SERGEANT AT ARMS. R.C. 101.311 (offenses committed on and after 3/22/01).

(T) OFFICER OR EMPLOYEE OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 109.51, 109.54, 109.541, 109.542 (offenses committed on and after 8/29/02).

(U) VETERAN'S HOME POLICE OFFICER. R.C. 5907.02 (offenses committed on and after 3/14/03).

(V) SPECIAL POLICE OFFICER EMPLOYED BY A MUNICIPAL CORPORATION AT A MUNICIPAL AIRPORT OR OTHER MUNICIPAL AIR NAVIGATION FACILITY. 14 C.F.R. 119.3; 49 C.F.R. 1542, 1544 (offenses committed on and after 3/19/03).

(W) STATE FIRE MARSHALL LAW ENFORCEMENT OFFICER. R.C. 109.71 (offenses committed on and after 9/23/08).

(X) INVESTIGATOR. R.C. 2903.11(E)(5), 109.541 (offenses committed on and after 3/14/07).

(Y) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 2903.12(C)(1), 2903.11(E)(4), 109.541 (offenses committed on and after 3/14/07).

(Z) SERIOUS PHYSICAL HARM. R.C. 2901.01.

14. CONCLUSION. OJI-CR 425.01.

15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.13 Assault R.C. 2903.13 (offenses committed on and after 3/14/07 but before 3/22/13) [Rev. 5-4-13]**

1. The defendant is charged with assault. Before you can find the defendant guilty of assault, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County), (other jurisdiction) Ohio, the defendant

*(Use appropriate alternative)*



(A) knowingly caused or attempted to cause physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*]).

(or)

(B) recklessly caused serious physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*]).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. ATTEMPT. An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in physical harm.

**COMMENT**

Drawn from R.C. 2923.02.

5. PHYSICAL HARM. “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

6. ANOTHER’S UNBORN. “Another’s unborn” means a member of the (human) (*homo sapiens*) species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.

**COMMENT**

Drawn from R.C. 2903.09(B).

7. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

8. SERIOUS PHYSICAL HARM TO PERSONS. OJI-CR 503.11(A) § 4; R.C. 2901.01.

9. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

## 10. ADDITIONAL FINDING(S):

- (A) CARETAKER. OJI-CR 425.25; R.C. 2903.10(B).
- (B) CARE FACILITY. OJI-CR 425.25; R.C. 2903.33(A).
- (C) FUNCTIONALLY IMPAIRED PERSON. OJI-CR 425.25; R.C. 2903.10(A).
- (D) PROBATIONER. OJI-CR 425.25; R.C. 2929.51 (offenses committed before 1/1/04).
- (E) FURLOUGHEE. OJI-CR 425.25; R.C. 2967.01, 2967.26, 2967.27 (offenses committed before 3/17/98).
- (F) PAROLEE. OJI-CR 425.25; R.C. 2967.01.
- (G) EMPLOYEE OF LOCAL CORRECTIONAL FACILITY. OJI-CR 425.25; R.C. 2903.13(C)(5)(d) and (e).

**COMMENT**

R.C. 2903.13(5)(d) and (e) were renumbered to R.C. 2903.13(D)(4) and (5) effective 4/10/01.

- (H) PEACE OFFICER. OJI-CR 425.25; R.C. 2935.01.

**COMMENT**

On and after 9/23/08 "peace officer" includes "a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code."

- (I) NATURAL RESOURCES LAW ENFORCEMENT STAFF OFFICER. R.C. 1501.013 (offenses committed on and after 3/18/99).
- (J) FOREST OFFICER. R.C. 1503.29 (offenses committed on and after 3/18/99).
- (K) PRESERVE OFFICER. R.C. 1517.10 (offenses committed on and after 3/18/99).
- (L) WILDLIFE OFFICER. R.C. 1531.13 (offenses committed on and after 3/18/99).
- (M) PARK OFFICER. R.C. 1541.10 (offenses committed on and after 3/18/99).
- (N) STATE WATERCRAFT OFFICER. R.C. 1547.521 (offenses committed on and after 3/18/99).
- (O) INDIVIDUAL DESIGNATED TO PERFORM LAW ENFORCEMENT DUTIES. R.C. 511.232, 1545.13, 6101.75 (offenses committed on and after 3/18/99).



- (P) ENFORCEMENT AGENT OF THE DEPARTMENT OF PUBLIC SAFETY. R.C. 5502.14 (offenses committed on and after 6/30/99).
- (Q) SPECIAL POLICE OFFICER EMPLOYED BY A PORT AUTHORITY. R.C. 4582.04, 4582.28 (offenses committed on and after 5/17/00).
- (R) THE HOUSE OF REPRESENTATIVES SERGEANT AT ARMS. R.C. 101.311 (offenses committed on and after 3/22/01).
- (S) OFFICER OR EMPLOYEE OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 109.51, 109.54, 109.541, 109.542 (offenses committed on and after 8/29/02).
- (T) VETERAN'S HOME POLICE OFFICER. R.C. 5907.02 (offenses committed on and after 3/14/03).
- (U) SPECIAL POLICE OFFICER EMPLOYED BY A MUNICIPAL CORPORATION AT A MUNICIPAL AIRPORT OR OTHER MUNICIPAL AIR NAVIGATION FACILITY. 14 C.F.R. 119.3; 49 C.F.R. 1542, 1544 (offenses committed on and after 3/19/03).
- (V) STATE FIRE MARSHALL LAW ENFORCEMENT OFFICER. R.C. 109.71 (offenses committed on and after 9/23/08).
- (W) PEACE OFFICER AS VICTIM. OJI-CR 425.25; R.C. 2903.13(C)(3).
- (X) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION AS VICTIM. OJI-CR 425.25; R.C. 2903.13(C)(3) (offenses committed on and after 3/14/07).
- (Y) SERIOUS PHYSICAL HARM TO A PEACE OFFICER. OJI-CR 425.25; R.C. 2903.13(C)(4) (offenses committed on and after 2/3/00).
- (Z) SERIOUS PHYSICAL HARM TO AN INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. OJI-CR 425.25; R.C. 2903.13(C)(4) (offenses committed on and after 3/14/07).
- (AA) INVESTIGATOR. R.C. 109.541 (offenses committed on and after 3/14/07).
- (BB) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. R.C. 2903.13(D)(10), 2903.11, 109.541 (offenses committed on and after 3/14/07).
- (CC) FIREFIGHTER. OJI-CR 425.25; R.C. 3937.41(A)(3).
- (DD) EMERGENCY MEDICAL SERVICE. OJI-CR 425.25; R.C. 4765.01 (offenses committed before 11/3/00).
- (EE) EMERGENCY MEDICAL SERVICE. OJI-CR 425.25; R.C. 4765.01 (offenses committed on and after 11/3/00).
- (FF) FIRST RESPONDER. R.C. 4765.01 (offenses committed on and after 11/3/00).

(GG) EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY. OJI-CR 425.25; R.C. 2903.13(C)(5) (offenses committed on and after 4/10/01).

(HH) PRIOR CONVICTION. OJI-CR 425.15.

11. CONCLUSION. OJI-CR 425.01.

12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.13 Assault R.C. 2903.13 (offenses committed on and after 3/22/13)**  
**[Rev. 5-4-13]**

1. The defendant is charged with assault. Before you can find the defendant guilty of assault, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant

(*Use appropriate alternative[s]*)

(A) knowingly (caused) (attempted to cause) physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*]).

(*or*)

(B) recklessly caused serious physical harm to (*insert name of victim*) (the unborn of [*insert name of mother*]).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. ATTEMPT. An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in physical harm.

**COMMENT**

Drawn from R.C. 2923.02.

5. PHYSICAL HARM. “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

6. THE UNBORN. “The unborn” means a member of the (human) (*homo sapiens*) species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.



**COMMENT**

Drawn from R.C. 2903.09(B).

7. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
8. SERIOUS PHYSICAL HARM TO PERSONS. OJI-CR 503.11(A) § 4; R.C. 2901.01.
9. SUBSTANTIAL RISK. "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

**10. ADDITIONAL FINDING(S):**

- (A) CARETAKER. OJI-CR 425.25; R.C. 2903.10(B).
- (B) CARE FACILITY. OJI-CR 425.25; R.C. 2903.33(A).
- (C) FUNCTIONALLY IMPAIRED PERSON. OJI-CR 425.25; R.C. 2903.10(A).
- (D) PROBATIONER. OJI-CR 425.25; R.C. 2929.51 (offenses committed before 1/1/04).
- (E) FURLOUGHEE. OJI-CR 425.25; R.C. 2967.01, R.C. 2967.26, R.C. 2967.27 (offenses committed before 3/17/98).
- (F) PAROLEE. OJI-CR 425.25; R.C. 2967.01.
- (G) EMPLOYEE OF LOCAL CORRECTIONAL FACILITY. OJI-CR 425.25; R.C. 2903.13(C).
- (H) PEACE OFFICER. OJI-CR 425.25; R.C. 2935.01.

**COMMENT**

On and after 9/23/08, "peace officer" includes "a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code."

- (I) NATURAL RESOURCES LAW ENFORCEMENT STAFF OFFICER. OJI-CR 425.25; R.C. 1501.013 (offenses committed on and after 3/18/99).
- (J) FOREST OFFICER. OJI-CR 425.25; R.C. 1503.29 (offenses committed on and after 3/18/99).

- (K) PRESERVE OFFICER. OJI-CR 425.25; R.C. 1517.10 (offenses committed on and after 3/18/99).
- (L) WILDLIFE OFFICER. OJI-CR 425.25; R.C. 1531.13 (offenses committed on and after 3/18/99).
- (M) PARK OFFICER. OJI-CR 425.25; R.C. 1541.10 (offenses committed on and after 3/18/99).
- (N) STATE WATERCRAFT OFFICER. OJI-CR 425.25; R.C. 1547.521 (offenses committed on and after 3/18/99).
- (O) INDIVIDUAL DESIGNATED TO PERFORM LAW ENFORCEMENT DUTIES. OJI-CR 425.25; R.C. 511.232, R.C. 1545.13, R.C. 6101.75 (offenses committed on and after 3/18/99).
- (P) ENFORCEMENT AGENT OF THE DEPARTMENT OF PUBLIC SAFETY. OJI-CR 425.25; R.C. 5502.14 (offenses committed on and after 6/30/99).
- (Q) SPECIAL POLICE OFFICER EMPLOYED BY A PORT AUTHORITY. OJI-CR 425.25; R.C. 4582.04, R.C. 4582.28 (offenses committed on and after 5/17/00).
- (R) THE HOUSE OF REPRESENTATIVES SERGEANT AT ARMS. OJI-CR 425.25; R.C. 101.311 (offenses committed on and after 3/22/01).
- (S) OFFICER OR EMPLOYEE OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. OJI-CR 425.25; R.C. 109.51, R.C. 109.54, R.C. 109.541, R.C. 109.542 (offenses committed on and after 8/29/02).
- (T) VETERAN'S HOME POLICE OFFICER. OJI-CR 425.25; R.C. 5907.02 (offenses committed on and after 3/14/03).
- (U) SPECIAL POLICE OFFICER EMPLOYED BY A MUNICIPAL CORPORATION AT A MUNICIPAL AIRPORT OR OTHER MUNICIPAL AIR NAVIGATION FACILITY. OJI-CR 425.25; 14 C.F.R. 119.3, 49 C.F.R. 1542, 49 C.F.R. 1544 (offenses committed on and after 3/19/03).
- (V) STATE FIRE MARSHALL LAW ENFORCEMENT OFFICER. OJI-CR 425.25; R.C. 109.71 (offenses committed on and after 9/23/08).
- (W) PEACE OFFICER AS VICTIM. OJI-CR 425.25; R.C. 2903.13(C)(4).
- (X) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION AS VICTIM. OJI-CR 425.25; R.C. 2903.13(C)(4) (offenses committed on and after 3/14/07).
- (Y) SERIOUS PHYSICAL HARM TO A PEACE OFFICER. OJI-CR 425.25; R.C. 2903.13(C)(4) (offenses committed on and after 2/3/00).
- (Z) SERIOUS PHYSICAL HARM TO AN INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. OJI-CR 425.25; R.C. 2903.13(C)(4) (offenses committed on and after 3/14/07).



- (AA) INVESTIGATOR. OJI-CR 425.25; R.C. 109.541 (offenses committed on and after 3/14/07).
- (BB) INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. OJI-CR 425.25; R.C. 2903.13(D)(10), R.C. 2903.11, R.C. 109.541 (offenses committed on and after 3/14/07).
- (CC) FIREFIGHTER. OJI-CR 425.25; R.C. 3937.41(A)(3).
- (DD) EMERGENCY MEDICAL SERVICE. OJI-CR 425.25; R.C. 4765.01 (offenses committed before 11/3/00).
- (EE) EMERGENCY MEDICAL SERVICE. OJI-CR 425.25; R.C. 4765.01 (offenses committed on and after 11/3/00).
- (FF) FIRST RESPONDER. OJI-CR 425.25; R.C. 4765.01 (offenses committed on and after 11/3/00).
- (GG) EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY. OJI-CR 425.25; R.C. 2903.13(C)(6) (offenses committed on and after 4/10/01).
- (HH) HEALTH CARE PERSONNEL. OJI-CR 425.25; R.C. 2903.13(C).
- (II) HEALTH CARE PROFESSIONAL/WORKER. OJI-CR 425.25; R.C. 2305.234.
- (JJ) HOSPITAL. OJI-CR 425.25; R.C. 2903.13(D), R.C. 3701.01.
- (KK) HEALTH MAINTENANCE ORGANIZATION. OJI-CR 425.25; R.C. 3727.01.
- (LL) DE-ESCALATION OR CRISIS INTERVENTION TRAINING. OJI-CR 425.25; R.C. 2903.13(D).
- (MM) JUDGE, MAGISTRATE, PROSECUTOR, OR COURT OFFICIAL/EMPLOYEE. OJI-CR 425.25; R.C. 2903.13(C).
- (NN) JUDGE. "Judge" means a judge of a court created under the constitution or statutes of this state or of a United States court located in this state.

**COMMENT**

R.C. 2903.13(D).

- (OO) MAGISTRATE. OJI-CR 425.25; R.C. 2903.13(D).
- (PP) PROSECUTOR. OJI-CR 425.25; R.C. 2903.13(D), R.C. 2935.01.
- (QQ) COURT OFFICIAL OR EMPLOYEE. "Court official or employee" means any official or employee of a court created under the constitution or statutes of this state or of a United States court located in this state.

**COMMENT**

OJI-CR 425.25; R.C. 2903.13(D).

(RR) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.13(D).

11. CONCLUSION. OJI-CR 425.01.

12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.14 Negligent assault R.C. 2903.14 (offenses committed on and after 9/6/96) [Rev. 12-11-10]**

1. The defendant is charged with negligent assault. Before you can find the defendant guilty of negligent assault, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County), (other jurisdiction), Ohio, the defendant negligently caused physical harm to (insert name of victim) (the unborn of [insert name of mother]) by means of a (deadly weapon) (dangerous ordnance).

2. NEGLIGENTLY. OJI-CR 417.19; R.C. 2901.22(D).

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(A)(3).

5. ANOTHER'S UNBORN. "Another's unborn" means a member of the (human) (homo sapiens) species, who is or was carried in the womb of another, during a period that begins with fertilization and continues unless and until live birth occurs.

**COMMENT**

Drawn from R.C. 2903.09(B).

6. DEADLY WEAPON. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

7. CAPABILITY OF DEADLY WEAPON. A deadly weapon is any instrument,



device, or thing which has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon (such as a gun, billy club, or brass knuckles), or it was possessed, carried, or used in this case as a weapon. These are questions of fact for you to determine.

8. DANGEROUS ORDNANCE. R.C. 2923.11(K) and (L).

9. CONCLUSION. OJI-CR 425.01.

10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.15 Permitting child abuse R.C. 2903.15 (offenses committed on and after 8/25/99)**

1. The defendant is charged with permitting child abuse. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant was the (parent) (guardian) (custodian) (person having custody) of (*insert name of child*) who was (under eighteen years of age) (a [mentally] [physically] handicapped child under twenty-one years of age), and caused (serious physical harm to) (the death of) (*insert name of child*) as a proximate result of recklessly permitting him/her to be (abused) (tortured) (administered [corporal punishment] [*describe other physical disciplinary measures*]) (physically restrained [in a cruel manner] [for a prolonged period]).

**COMMENT**

R.C. 2903.15 is silent as to a culpable mental state. The Committee believes that "recklessly" is the appropriate culpable mental state as a result of the application of R.C. 2901.21(B). See *State v. McGee* (1997), 79 Ohio St.3d 193, 680 N.E.2d 975, interpreting R.C. 2919.22(A).

2. GUARDIAN. R.C. 2111.01(A).

3. CUSTODIAN. "Custodian" means a person legally entrusted with custody (by court order) (by law).

4. CHILD. "Child" means any person under eighteen years of age or a mentally or physically handicapped person under twenty-one years of age.

**COMMENT**

R.C. 5153.01(B)(4).

There is no statutory definition of "mentally or physically handicapped child." Ohio Administrative Code defines "handicapped child" in Ohio Adm. Code 3301-51-01(U) and related subsections. It must be noted that the Administrative

Code sections define a "handicapped child" as a person below twenty-two years of age. However, R.C. 2903.15 is limited to a mentally or physically handicapped child under twenty-one years of age. Instructions pertinent to the definition of "mentally or physically handicapped" may be drawn from the definitions contained in this Administrative Code section.

5. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
6. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
7. SERIOUS PHYSICAL HARM. R.C. 2901.01(A)(6).
8. SUBSTANTIAL RISK. "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

#### COMMENT

Drawn from R.C. 2901.01(A)(8).

9. ABUSED. "Abused" means any act that causes physical or mental injury that harms or threatens to harm the child's health or welfare.
10. AFFIRMATIVE DEFENSE:
  - (A) GENERAL. OJI-CR 417.27.
  - (B) NO AVAILABLE MEANS TO PREVENT. The defendant claims that he/she did not have readily available a means to prevent the (harm to) (death of) (*insert name of child*), and that the defendant took timely and reasonable steps to summon aid.
11. CONCLUSION. OJI-CR 425.01.
12. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
13. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

#### **CR 503.16 Failure to provide for functionally impaired person R.C. 2903.16**

1. The defendant is charged with (knowingly) (recklessly) failing to provide for a functionally impaired person. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, (*other jurisdiction*), Ohio, the defendant was a caretaker, and that (*insert name of victim*) was a functionally impaired person under the defendant's care, and that the defendant

(*Use appropriate alternative*)

- (A) knowingly failed to provide (*insert name of victim*) with any (treatment) (care) (goods) (service) that (was) (were) necessary to maintain his/her health or safety, and



that this failure resulted in (physical harm) (serious physical harm) to him/her.

(or)

(B) recklessly failed to provide (*insert name of victim*) with any (treatment) (care) (goods) (service) that (was) (were) necessary to maintain his/her health or safety, and that this failure resulted in serious physical harm to him/her.

**COMMENT**

The Committee cannot reconcile the sentencing provision of R.C. 2903.16(C)(2) with the elements of R.C. 2903.16(B). Section (C)(2) provides two penalty levels for the same offense.

2. CARETAKER. R.C. 2903.10(B).
3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
4. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
5. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
6. FUNCTIONALLY IMPAIRED PERSON. R.C. 2903.10(A).
7. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(A)(3).

8. SERIOUS PHYSICAL HARM TO PERSONS. OJI-CR 503.11(A) § 4; R.C. 2901.01(A)(5).
9. SUBSTANTIAL RISK. "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01(A)(8).

10. CONCLUSION. OJI-CR 425.01.

11. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.21 Aggravated menacing R.C. 2903.21 (offenses committed on and after 9/6/96)**

1. The defendant is charged with aggravated menacing. Before you can find the defendant guilty of aggravated menacing, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, (other jurisdiction), Ohio, the defendant knowingly caused (insert name of victim) to believe that the defendant would cause serious physical harm to (insert name of victim) (his/her property) (his/her unborn] (a member of his/her immediate family).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. SERIOUS PHYSICAL HARM TO PERSONS. OJI-CR 503.11(A) § 4; R.C. 2901.01(A)(5).

5. SUBSTANTIAL RISK. "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01(A)(8).

6. SERIOUS PHYSICAL HARM TO PROPERTY. R.C. 2901.01(A)(6).

7. IMMEDIATE FAMILY. "Immediate family" means a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, and children, including adopted children.

**COMMENT**

R.C. 2905.21(I).

8. ADDITIONAL FINDINGS:

EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY. OJI-CR 425.25; R.C. 2903.22(B) (offenses committed on and after 4/10/01).

PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.22(B).

9. CONCLUSION. OJI-CR 425.01.



10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**COMMENT**

Menacing is a lesser included offense of aggravated menacing. Neither offense can be a lesser included offense of any type of assault because an assault requires either actual harm or an attempt to cause actual harm. *State v. Beaty* (1975), 45 Ohio App.2d 127, 74 O.O.2d 137, 341 N.E.2d 622.

**CR 503.211 Menacing by stalking R.C. 2903.211 (offenses committed on and after 3/10/00 but before 1/1/08) [Rev. 3-29-08]**

1. The defendant is charged with menacing by stalking. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant, by engaging in a pattern of conduct, knowingly caused ([insert name of victim] to believe that the defendant would cause physical harm to him/her) (mental distress to [insert name of victim]).

2. PATTERN OF CONDUCT. R.C. 2903.211.

3. PUBLIC OFFICIAL. "Public official" means any elected or appointed officer or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

**COMMENT**

R.C. 2921.01.

4. LAW ENFORCEMENT OFFICER. R.C. 2901.01.

5. EMERGENCY MEDICAL SERVICES PERSON. R.C. 2903.211.

6. EMERGENCY MEDICAL SERVICES PERSONNEL. R.C. 2133.21.

7. FIREFIGHTER. "Firefighter" means any regular, paid, member of a lawfully constituted fire department of a municipal corporation or township.

**COMMENT**

R.C. 3937.41.

8. KNOWINGLY. OJI-CR 417.11.

9. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

10. **PHYSICAL HARM TO PERSONS.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

11. **MENTAL DISTRESS.** “Mental distress” means any mental illness or condition that (involves some temporary substantial incapacity) (would normally require psychiatric treatment, psychological treatment, or other mental health services). Proof that (*insert name of victim*) requested or received psychiatric treatment, psychological treatment, or other mental health services is not required in order to show that he/she was caused mental distress.

**COMMENT**

Drawn from R.C. 2903.211(D) and (E).

12. **ADDITIONAL FINDINGS:**

**PRIOR CONVICTION.** OJI-CR 425.15; R.C. 2903.211(B)(2)(a).

**THREAT OF PHYSICAL HARM.** OJI-CR 425.25; R.C. 2903.211(B)(2)(b).

**TRESPASS.** OJI-CR 425.25; R.C. 2903.11(B)(2)(c).

**MINOR VICTIM.** OJI-CR 425.25; R.C. 2903.211(B)(2)(d).

**HISTORY OF VIOLENCE.** OJI-CR 425.25; R.C. 2903.211(B)(2)(e).

**DEADLY WEAPON.** OJI-CR 425.25; R.C. 2903.211(B)(2)(f).

**SUBJECT TO PROTECTION ORDER.** OJI-CR 425.25; R.C. 2903.211(B)(2)(g).

**SERIOUS PHYSICAL HARM TO PROPERTY.** OJI-CR 425.25; R.C. 2903.211(B)(2)(h).

**DETERMINED TO BE SUBSTANTIAL RISK OF PHYSICAL HARM TO OTHERS.** OJI-CR 425.25; R.C. 2903.211(B)(2)(i).

**EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY.** OJI-CR 425.25; R.C. 2903.03(C)(5) (offenses committed on and after 4/10/01).

13. **CONCLUSION.** OJI-CR 425.01.

14. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 503.211 Menacing by stalking R.C. 2903.211 (offenses committed on and after 1/1/08 but before 8/16/16) [Rev. 12/10/16]**

1. The defendant is charged with menacing by stalking. Before you can find the



defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant,

(Use appropriate alternative[s])

#### COMMENT

There is a division in the appellate districts in Ohio whether R.C. 2903.211(A) requires that the victim actually experienced mental distress or that the victim believed the defendant would cause mental distress. *See Fondessy v. Simon*, 142 Ohio St. 3d 147, 2014-Ohio-4638. The trial court should consult the law of the specific appellate district on this issue.

(A)(1) by engaging in a pattern of conduct, knowingly caused (insert name of victim) to believe that the defendant would cause (physical harm) (mental distress) to him/her;

(or)

(A)(2) through the use of any electronic method of remotely transferring information including, but not limited to, any (computer) (computer network) (computer program) (computer system) posted a message with the purpose to urge or incite (insert name of third person) to engage in a pattern of conduct that knowingly caused (insert name of victim) to believe that (insert name of third person) would cause (physical harm) (distress) to him/her;

(or)

(A)(3) acting with a sexual motivation and (insert [A] [1] or [A] [2] instruction).

#### 2. PATTERN OF CONDUCT. R.C. 2903.211.

#### COMMENT

Effective 8/16/16, the statutory definition of “pattern of conduct” was expanded to include the “use of intentionally written or verbal graphic gestures” or receipt of information or data through the use of “any form of written communication.” H.B. 151.

3. PUBLIC OFFICIAL. “Public official” means any elected or appointed officer or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

#### COMMENT

R.C. 2921.01.

4. LAW ENFORCEMENT OFFICER. R. C. 2901.01.
5. EMERGENCY MEDICAL SERVICES PERSON. R.C. 2903.211.
6. EMERGENCY MEDICAL SERVICES PERSONNEL. R.C. 2133.21
7. EMERGENCY FACILITY PERSON. R.C. 2903.211.
8. EMERGENCY FACILITY PERSONNEL. R.C. 2909.04.
9. FIREFIGHTER. "Firefighter" means any regular, paid member of a lawfully constituted fire department of a municipal corporation or township.

**COMMENT**

R.C. 3937.41.

10. KNOWINGLY. OJI-CR 417.11.
11. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.
12. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other psychological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

13. MENTAL DISTRESS. "Mental distress" means any mental illness or condition that

*(Use appropriate alternatives[s])*

(A) involves some temporary substantial incapacity;

*(or)*

(B) would normally require psychiatric treatment, psychological treatment, or other mental health services, regardless of whether any person requested or received such treatment or services.

**COMMENT**

Drawn from R.C. 2903.211(D) and (E).

14. COMPUTER, COMPUTER NETWORK, COMPUTER PROGRAM, AND COMPUTER SYSTEM. R.C. 2913.01.



15. POST A MESSAGE. R.C. 2903.211.
16. PURPOSELY. OJI-CR 417.01.
17. THIRD PERSON. "Third person" means an individual who is neither the offender nor the victim of the conduct.

**COMMENT**

R.C. 2903.211.

**18. SEXUAL MOTIVATION.**

"Sexual motivation" means a purpose to gratify sexual needs or desires of the defendant.

**COMMENT**

R.C. 2971.01.

**19. AFFIRMATIVE DEFENSE:**

- (A) GENERAL. OJI-CR 417.27.
- (B) PROVIDING ACCESS.

**COMMENT**

R.C. 2903.211(F)(1) creates an exception to the prohibition of R.C. 2903.211. The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. See *State v. Little* 8th. Dist. Cuyahoga No. 57033(Mar. 14, 1991); *State v. Hassell* 1st Dist. Hamilton No C-920530. (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th

Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

*(Use appropriate alternative[s])*

(1) The defendant claims that all he/she did was provide (access or connection) (capabilities that were incidental to providing access or connection) to/from an electronic method of remotely transferring information that was not under his/her control and that he/she did not create the content of the material that was the subject of the access or connection.

*(or)*

(2) The defendant claims that when he/she provided access or connection to/from an electronic method of remotely transferring information that was not under his/her control, he/she acted in good faith to block the receipt or transmission of *(describe nature of material)* that he/she believed (was) (would be) sent.

#### COMMENT

Drawn from R.C. 2903.211(F)(1).

These affirmative defenses do not apply if the defendant conspired with a person who was actively involved in the creation or knowing distribution of the unlawful material in violation of R.C. 2903.211 or who knowingly advertised the availability of the material. R.C. 2903.211(F)(3).

#### 20. ADDITIONAL FINDINGS:

- (A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.211(B)(2)(a).
- (B) THREAT OF PHYSICAL HARM. OJI-CR 425.25; R.C. 2903.211(B)(2)(b).
- (C) TRESPASS. OJI-CR 425.25; R.C. 2903.211(B)(2)(c).
- (D) MINOR VICTIM. OJI-CR 425.25; R.C. 2903.211(B)(2)(d).
- (E) HISTORY OF VIOLENCE. OJI-CR 425.25; R.C. 2903.211(B)(2)(e).
- (F) DEADLY WEAPON. OJI-CR 425.25; R.C. 2903.211(B)(2)(f).
- (G) SUBJECT TO PROTECTION ORDER. OJI-CR 425.25; R.C. 2903.211(B)(2)(g).
- (H) SERIOUS PHYSICAL HARM TO PROPERTY. OJI-CR 425.25; R.C. 2903.211(B)(2)(h).
- (I) DETERMINED TO BE SUBSTANTIAL RISK OF PHYSICAL HARM TO OTHERS. OJI-CR 425.25; R.C. 2903.211(B)(2)(i).



(J) EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY. OJI-CR 425.25; R.C. 2903(C)(5).

21. CONCLUSION. OJI-CR 425.01.

22. CONCLUSION WITH AN AFFIRMATIVE OFFENSE. OJI-CR 425.03.

23. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.211 Menacing by stalking R.C. 2903.211 (offenses committed on and after 8/16/16) [Rev. 12-10-16]**

1. The defendant is charged with menacing by stalking. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant,

*(Use appropriate alternative[s])*

**COMMENT**

There is a division in the appellate districts in Ohio whether R.C. 2903.211(A) requires that the victim actually experienced mental distress or that the victim believed the defendant would cause mental distress. *See Fondessy v. Simon*, 142 Ohio St. 3d 147, 2014-Ohio-4638. The trial court should consult the law of the specific appellate district on this issue.

(A)(1) by engaging in a pattern of conduct, knowingly caused (*insert name of victim*) to believe that the defendant would cause (physical harm) (mental distress) to (him/her) (his/her family or household member);

*(or)*

(A)(2) through the use of any (form of written communication) (electronic method of remotely transferring information, including but not limited to, any [computer] [computer network] [computer program] [computer system] [telecommunication device]), did (post a message) (use any intentionally written or verbal graphic gesture) with the purpose to

*(Use appropriate alternative[s])*

(a) engage in a pattern of conduct that knowingly caused (*insert name of victim*) to believe that the defendant would cause (physical harm) (mental distress) to (him/her) (his/her family or household member);

*(or)*

(b) urge or incite (a third person) (*insert name of third person*) to engage in a pattern of conduct that defendant knew would cause (*insert name of victim*) to believe that the person would cause (physical harm) (mental distress) to (him/her) (his/her family or household member).

(or)

(A)(3) acting with a sexual motivation and (*insert [A] [1] or [A] [2] instruction*).

2. PATTERN OF CONDUCT. R.C. 2903.211.

3. PUBLIC OFFICIAL. "Public official" means any elected or appointed officer or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

**COMMENT**

R.C. 2921.01.

4. LAW ENFORCEMENT OFFICER. R. C. 2901.01.

5. EMERGENCY MEDICAL SERVICES PERSON. R.C. 2903.211.

6. EMERGENCY MEDICAL SERVICES PERSONNEL. R.C. 2133.21

7. EMERGENCY FACILITY PERSON. R.C. 2903.211.

8. EMERGENCY FACILITY PERSONNEL. R.C. 2909.04.

9. FIREFIGHTER. "Firefighter" means any regular, paid member of a lawfully constituted fire department of a municipal corporation or township.

**COMMENT**

R.C. 3937.41.

10. KNOWINGLY. OJI-CR 417.11.

11. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

12. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other psychological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

13. FAMILY OR HOUSEHOLD MEMBER. R.C. 2903.211.

14. PERSON LIVING AS A SPOUSE. "Person living as a spouse" means a person who ([was living] [had lived]) (was cohabitating in a common law marital relationship) (had cohabitated within five years prior to the date of offense) with the victim.



**COMMENT**

Drawn from R.C. 2903.211.

15. **MENTAL DISTRESS.** “Mental distress” means any mental illness or condition that

*(Use appropriate alternatives[s])*

(A) involves some temporary substantial incapacity;

*(or)*

(B) would normally require psychiatric treatment, psychological treatment, or other mental health services, regardless of whether any person requested or received such treatment or services.

**COMMENT**

Drawn from R.C. 2903.211(D) and (E).

16. **COMPUTER, COMPUTER NETWORK, COMPUTER PROGRAM, COMPUTER SYSTEM, AND TELECOMMUNICATIONS DEVICE.** R.C. 2913.01.

17. **POST A MESSAGE.** R.C. 2903.211.

18. **PURPOSELY.**

OJI-CR 417.01.

19. **THIRD PERSON.** “Third person” means an individual who is neither the offender nor the victim of the conduct.

**COMMENT**

R.C. 2903.211.

20. **SEXUAL MOTIVATION.** “Sexual motivation” means a purpose to gratify sexual needs or desires of the defendant.

**COMMENT**

R.C. 2971.01.

21. **AFFIRMATIVE DEFENSE:**

- (A) GENERAL. OJI-CR 417.27.
- (B) PROVIDING ACCESS.

#### COMMENT

R.C. 2903.211(F)(1) creates an exception to the prohibition of R.C. 2903.211. The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. See *State v. Little* 8th. Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell* 1st Dist. Hamilton No C-920530. (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

(Use appropriate alternative[s])

(1) The defendant claims that all he/she did was provide (access or connection) (capabilities that were incidental to providing access or connection) to/from an electronic method of remotely transferring information that was not under his/her control and that he/she did not create the content of the material that was the subject of the access or connection.

(or)

(2) The defendant claims that when he/she provided access or connection to/from an electronic method of remotely transferring information that was not under his/her control, he/she acted in good faith to block the receipt or transmission of (describe nature of material) that he/she believed (was) (would be) sent.

#### COMMENT

Drawn from R.C. 2903.211(F)(1).



These affirmative defenses do not apply if the defendant conspired with a person who was actively involved in the creation or knowing distribution of the unlawful material in violation of R.C. 2903.211 or who knowingly advertised the availability of the material. R.C. 2903.211(F)(3).

22. ADDITIONAL FINDINGS:

- (A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.211(B)(2)(i).
- (B) THREAT OF PHYSICAL HARM. OJI-CR 425.25; R.C. 2903.211(B)(2)(b).
- (C) TRESPASS. OJI-CR 425.25; R.C. 2903.211(B)(2)(c).
- (D) MINOR VICTIM. OJI-CR 425.25; R.C. 2903.211(B)(2)(d).
- (E) HISTORY OF VIOLENCE. OJI-CR 425.25; R.C. 2903.211(B)(2)(e).
- (F) DEADLY WEAPON. OJI-CR 425.25; R.C. 2903.211(B)(2)(f).
- (G) SUBJECT TO PROTECTION ORDER. OJI-CR 425.25; R.C. 2903.211(B)(2)(g).
- (H) SERIOUS PHYSICAL HARM TO PROPERTY. OJI-CR 425.25; R.C. 2903.211(B)(2)(h).
- (I) DETERMINED TO BE SUBSTANTIAL RISK OF PHYSICAL HARM TO OTHERS. OJI-CR 425.25; R.C. 2903.211(B)(2)(i).
- (J) EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY. OJI-CR 425.25; R.C. 2903(C)(5).

23. CONCLUSION. OJI-CR 425.01.

24. CONCLUSION WITH AN AFFIRMATIVE OFFENSE. OJI-CR 425.03.

25. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.22 Menacing R.C. 2903.22 (offenses committed on and after 9/6/96)**

1. The defendant is charged with menacing. Before you can find the defendant guilty of menacing, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, (other jurisdiction), Ohio, the defendant knowingly caused (insert name of victim) to believe that the defendant would cause physical harm to (his/her person) (his/her property) (his/her unborn) (a member of his/her immediate family).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(A)(3).

5. **PHYSICAL HARM TO PROPERTY.** "Physical harm to property" means any tangible damage to property which, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

**COMMENT**

R.C. 2901.01(A)(4).

6. **IMMEDIATE FAMILY.** "Immediate family" means a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, and children, including adopted children.

**COMMENT**

R.C. 2905.21(I).

7. **ADDITIONAL FINDINGS:**

**EMPLOYEE OF PUBLIC CHILDREN SERVICES AGENCY/PRIVATE CHILD PLACING AGENCY.** OJI-CR 425.25; R.C. 2903.21(B) (offenses committed on and after 4/10/01).

**PRIOR CONVICTION.** OJI-CR 425.15; R.C. 2903.21(B).

8. **CONCLUSION.** OJI-CR 425.01.

9. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 503.31 Hazing R.C. 2903.31 (offenses committed before 10/7/21) [Rev. 10/9/21]**

1. The defendant is charged with hazing. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant

*(Use appropriate alternative)*

(A) (did) (coerced another to do) any act of initiation into any student or other organization and that act of initiation caused or created a substantial risk of causing mental or physical harm to (*insert name of victim*).

*(or)*

(B) was a(n) (administrator) (employee) (faculty member) of a (primary) (secondary) (post-secondary) (*describe other educational institution*), and recklessly permitted



(another) (others) to (do) (coerce another to do) any act of initiation into any student or other organization and that act of initiation caused or created a substantial risk of causing mental or physical harm to (*insert name of victim*).

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that R.C. 2903.31(A) imposes strict liability. R.C. 2901.21(B); *State v. Wac* (1981), 68 Ohio St.2d 84, 22 O.O.3d 299, 428 N.E.2d 428.

3. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

4. COERCE. “Coerce” means to compel or force.

5. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01(A)(8).

6. MENTAL HARM TO PERSONS. “Mental harm to persons” means any injury or impairment of the mental or emotional well being of another.

**COMMENT**

There is no statutory definition of mental harm to persons, but see *Carpetta v. The Pi Kappa Alpha Fraternity* (C.P. 1998), 100 Ohio Misc.2d 42, 718 N.E.2d 1007.

7. PHYSICAL HARM TO PERSONS. “Physical harm to persons” means any injury, illness or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(A)(3).

8. CONCLUSION. OJI-CR 425.01.

**CR 503.31 Hazing R.C. 2903.31 (offenses committed on and after 10/7/21)**  
**[Rev. 10/9/21]**

1. The defendant is charged with hazing. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_, in \_\_\_\_\_ County (other jurisdiction), Ohio, the defendant

(Use appropriate alternative)

(A) recklessly (*describe act*) (coerced [*insert name of person coerced*] to [consume alcohol] [consume a drug of abuse] [*describe other act*]) for (initiation into) ([continuation] [reinstatement] of [membership in] [affiliation with]) a (student organization) (*describe other organization*) and this conduct caused or created a substantial risk of causing (mental) (physical) harm to (*insert name of victim*).

**COMMENT**

Drawn from R.C. 2903.31(B)(1).

(or)

(B) was a/an (administrator) (employee) (faculty member) (teacher) (consultant) (alumnus) (volunteer) of a/an ([national organization] [international organization] [*describe other organization*] with which a [fraternity] [sorority] was affiliated) ([primary] [secondary] [post-secondary] school) (*describe other educational institution, public or private*) and recklessly permitted (another) (others) to (*describe act*) (coerce [*insert name of person coerced*] to [consume alcohol] [consume a drug of abuse] [*describe other act*]) for (initiation into) ([continuation] [reinstatement] of [membership in] [affiliation with]) a (student organization) (*describe other organization*) and this conduct caused or created a substantial risk of causing (mental) (physical) harm to (*insert name of victim*) who was associated with the (organization) ([primary] [secondary] [post-secondary] school) (*describe other educational institution*).

**COMMENT**

Drawn from R.C. 2903.31(B)(2).

(or)

(C) recklessly participated in (*describe act*) that included coercing (*insert name of person coerced*) to (consume alcohol) (consume a drug of abuse) for (initiation into) ([continuation] [reinstatement] of [membership in] [affiliation with]) a (student organization) (*describe other organization*) and this conduct resulted in serious physical harm to (*insert name of victim*).

**COMMENT**

Drawn from R.C. 2903.31(C)(1).

(or)



(D) was a/an (administrator) (employee) (faculty member) (teacher) (consultant) (alumnus) (volunteer) of a/an ([national organization] [international organization] [*describe other organization*] with which a [fraternity] [sorority] was affiliated) ([primary] [secondary] [post-secondary] school) (*describe other educational institution, public or private*), and recklessly permitted (another) (others) to participate in (*describe act*) that included coercing (*insert name of person coerced*) to (consume alcohol) (consume a drug of abuse) for (initiation into) ([continuation] [reinstatement] of [membership in] [affiliation with]) a (student organization) (*describe other organization*) and the conduct resulted in serious physical harm to (*insert name of victim*).

**COMMENT**

Drawn from R.C. 2903.31(C)(2).

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

3. COERCE. “Coerce” means to compel by force, pressure, threat, or other means. Coercion includes undue influence and a compulsion brought about by moral force or in some other manner with or without physical force.

**COMMENT**

Drawn from *State v. Woods*, 48 Ohio St.2d 127 (1976); *State v. Rasawehr*, 3d Dist. Mercer No. 10-19-15, 2020-Ohio-429; *State v. Moore*, 8th Dist. Cuyahoga No. 105285, 2018-Ohio-1825; *State v. Byrd*, 8th Dist. Cuyahoga No. 80609, 2002-Ohio-5838.

4. ACT OF INITIATION. An “act of initiation into any student or other organization” is anything done or being done that is related to someone becoming a member of such an organization.

**COMMENT**

*Carpetta v. The Pi Kappa Alpha Fraternity*, 100 Ohio Misc.2d 42 (C.P. 1998).

5. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

6. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

7. **PHYSICAL HARM TO PERSONS.** "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

8. **SERIOUS PHYSICAL HARM.** R.C. 2901.01.

9. **CONCLUSION.** OJI-CR 425.01.

10. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 503.311 Failure to report hazing R.C. 2903.311 (offenses committed on and after 10/7/21) [Rev. 10/9/21]**

1. The defendant is charged with failure to report hazing. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant was a/an (administrator) (employee) (faculty member) (teacher) (consultant) (alumnus) (volunteer) of a ([national organization] [international organization] [*describe other organization*] with which a [fraternity] [sorority] was affiliated) ([primary] [secondary] [post-secondary] school) (*describe other educational institution, public or private*), was acting in an official and professional capacity, and recklessly failed to immediately report his/her knowledge of hazing to a law enforcement agency in the county in which (the victim of hazing resided) (the hazing was occurring) (the hazing occurred).

**COMMENT**

Drawn from R.C. 2903.311(B).

2. **RECKLESSLY.** OJI-CR 417.17; R.C. 2901.22(C).

3. **HAZING.** R.C. 2903.31(A)(1).

4. **LAW-ENFORCEMENT AGENCY.** "Law-enforcement agency" is an agency that has a statutory duty to enforce laws and authority to arrest violators. Law-enforcement agency includes those acting for a law-enforcement agency by direction of the agency, but does not include private citizens not directed or controlled by a law-enforcement agency.

**COMMENT**

Drawn from *In re M.H.*, 163 Ohio St.3d 93, 2020-Ohio-5485.



## 5. ADDITIONAL FINDINGS:

(A) HAZING CAUSED SERIOUS PHYSICAL HARM. In the event you find the defendant guilty of failure to report hazing, you must further determine whether the hazing that was not reported caused serious physical harm.

(B) CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

(C) SERIOUS PHYSICAL HARM. R.C. 2901.01.

## 6. CONCLUSION. OJI-CR 425.01.

## 7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

8. ADDITIONAL FINDING VERDICT FORM. We, the jury, having found the defendant guilty of failure to report hazing, further find that the state \_\_\_\_\_\* prove beyond a reasonable doubt that the hazing that was not reported caused serious physical harm.

\* Insert in ink:

“Did”

or

“Did Not”

**CR 503.34 Patient abuse; neglect R.C. 2903.34 (offenses committed on and after 7/1/96) [Rev. 10-11-08]**

1. The defendant is charged with patient (abuse) (gross neglect) (neglect). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant (owned) (operated) (administered) (was an agent or employee of) a care facility in which (*insert name of victim*) was a (resident) (patient), and the defendant committed

(Use appropriate alternative)

(A)(1) abuse against (*insert name of victim*).

(or)

(A)(2) gross neglect against (*insert name of victim*).

(or)

(A)(3) neglect against (*insert name of victim*).

## 2. CARE FACILITY. R.C. 2903.33(A)(1)–(9).

3. ABUSE. “Abuse” means knowingly causing physical harm or recklessly causing serious physical harm to a person by physical contact with the person or by the

inappropriate use of physical or chemical restraint, medication, or isolation on the person.

**COMMENT**

R.C. 2903.33(B).

4. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
5. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

6. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
7. SERIOUS PHYSICAL HARM TO PERSONS. R.C. 2901.01.
8. PHYSICAL CONTACT. "Physical contact" means any touching of another.
9. INAPPROPRIATE USE OF PHYSICAL OR CHEMICAL RESTRAINT, MEDICATION, OR ISOLATION. R.C. 2903.33(D).
10. GROSS NEGLIGENCE. "Gross neglect" means knowingly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in physical harm or serious physical harm to the person.

**COMMENT**

R.C. 2903.33(C)(1).

11. NEGLIGENCE. "Neglect" means recklessly failing to provide a person with any treatment, care, goods, or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

**COMMENT**

R.C. 2903.33(C)(2).

12. AFFIRMATIVE DEFENSES:
  - (A) GENERAL. OJI-CR 417.27.



(B) RELIANCE ON SPIRITUAL MEANS. R.C. 2903.34(B)(1). The defendant claims that (*insert name of victim*) relied upon treatment by spiritual means through prayer alone, in accordance with the (tenets) (beliefs) of a recognized religious denomination.

**COMMENT**

The Committee believes that “reliance on spiritual means” is an affirmative defense or in the nature of an affirmative defense. It is applicable only to a charge of patient neglect under R.C. 2903.34(A)(3).

(C) ORDER BY SUPERIOR AUTHORITY R.C. 2903.34(B)(2). The defendant claims that he/she acted in good faith solely because he/she was ordered to commit the conduct by a person with supervisory authority over him/her.

**13. ADDITIONAL FINDING:**

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.34(C)–(E).

14. CONCLUSION. OJI-CR 425.01.

15. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

16. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.341 Patient endangerment R.C. 2903.341 (*offenses committed on and after 1/30/04 but before 10/12/16*) [Rev. 2/11/17]**

1. The defendant is charged with patient endangerment. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant

(*Use appropriate alternative*)

(A) was a MR/DD caretaker and recklessly created a substantial risk to the health or safety of (*insert name of victim*), who (is) (was) a (mentally retarded) (developmentally disabled) person;

**COMMENT**

The Committee believes that recklessness is an element of a violation of R.C. 2903.341(B). See R.C. 2901.21(B); *State v. Rash*, 5th Dist. Stark No. 2008-CA-52, 2009-Ohio-2220; *State v. McMillen*, 5th Dist. Stark No. 2008-CA-122, 2009-Ohio-210. No other appellate district has addressed this issue. The Supreme Court has construed similar language in child endangerment, R.C. 2919.22, to require recklessness as the culpable mental state. *State v. McGee*, 79 Ohio St.3d 193 (1997).

(or)

(B) (owned) (operated) (administered) (was an agent of) a care facility and condoned, or knowingly permitted, conduct by a MR/DD caretaker who was (employed by) (under the control of) the defendant that created a substantial risk to the health or safety of (*insert name of victim*), who (is) (was) a (mentally retarded) (developmentally disabled) person who was under the care of the defendant.

**COMMENT**

The Committee believes “condone” means to knowingly permit. Therefore, the requisite culpable mental state for a R.C. 2903.341(C) offense is knowingly.

2. MR/DD CARETAKER. R.C. 2903.341.
3. MR/DD EMPLOYEE. R.C. 5123.50.
4. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or a significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01.

5. MENTALLY RETARDED PERSON. R.C. 5123.01.
6. DEVELOPMENTALLY DISABLED PERSON. R.C. 5123.01.
7. CARE FACILITY. R.C. 2903.33(A)(1)–(9).
8. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
9. AFFIRMATIVE DEFENSES:

(A) GENERAL. OJI-CR 417.27.

(B) RELIANCE UPON SPIRITUAL MEANS. R.C. 2903.341.

(1) BY DEFENDANT. R.C. 2903.341(B). The defendant claims that he/she/it treated a physical or mental (illness) (defect) of (*insert name of victim*) by spiritual means through prayer alone, in accordance with the (tenets) (beliefs) of a recognized religious body.

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(B).

The Committee believes that “reliance on spiritual means” is an affirmative defense because it provides an excuse or justification when the purpose of the



defendant's conduct is peculiarly within the defendant's knowledge. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

(2) BY VICTIM. R.C. 2903.341(C). The defendant claims that (*insert name of victim*) relied upon treatment by spiritual means through prayer alone in accordance with the (tenets) (beliefs) of a recognized religious denomination.

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(C).

The Committee believes that "reliance on spiritual means" is an affirmative defense or in the nature of an affirmative defense.

(C) ORDER BY SUPERIOR AUTHORITY. R.C. 2903.341(D)(1). The defendant claims that he/she/it acted in good faith solely because he/she/it was ordered to commit the conduct by a person with (supervisory authority over him/her/it) (authority over his/her/its conduct pursuant to a contract for the provision of services).

(D) FOLLOWING INDIVIDUAL SERVICE PLAN OR ADMINISTRATIVE CODE RULE. R.C. 2903.341(D)(2). The defendant claims that he/she/it was following the (individual service plan for [*insert name of victim*]) (admission, discharge, and transfer rule set forth in the Administrative Code).

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(C).

(E) ABSENCE OF MEANS TO PREVENT HARM. R.C. 2903.341(D)(3). The defendant claims that he/she/it did not have readily available a means to prevent the (harm to) (death of) (*insert name of victim*) and that he/she/it took reasonable steps to summon aid.

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(C).

**10. ADDITIONAL FINDING:**

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.341(E).

**11. CONCLUSION. OJI-CR 425.01.**

**12. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.**

13. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.341 Patient endangerment R.C. 2903.341 (offenses committed on and after 10/12/16) [Rev. 2/11/17]**

1. The defendant is charged with patient endangerment. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant

(*Use appropriate alternative*)

(A) was a developmental disabilities caretaker and recklessly created a substantial risk to the health or safety of (*insert name of victim*), who (is) (was) a developmentally disabled person.

**COMMENT**

The Committee believes that recklessness is an element of a violation of R.C. 2903.341(B). *See* R.C. 2901.21(B); *State v. Rash*, 5th Dist. Stark No. 2008-CA-52, 2009-Ohio-2220; *State v. McMillen*, 5th Dist. Stark No. 2008-CA-122, 2009-Ohio-210. No other appellate district has addressed this issue. The Supreme Court has construed similar language in child endangerment, R.C. 2919.22, to require recklessness as the culpable mental state. *State v. McGee*, 79 Ohio St.3d 193 (1997).

(*or*)

(B) (owned) (operated) (administered) (was an agent of) a care facility and condoned, or knowingly permitted, conduct by a developmental disabilities caretaker who was (employed by) (under the control of) the defendant that created a substantial risk to the health or safety of (*insert name of victim*), who (is) (was) a developmentally disabled person who was under the care of the defendant.

**COMMENT**

The Committee believes “condone” means to knowingly permit. Therefore, the requisite culpable mental state for a R.C. 2903.341(C) offense is knowingly.

2. DEVELOPMENTAL DISABILITIES CARETAKER. R.C. 2903.341.

3. DEVELOPMENTAL DISABILITIES EMPLOYEE. R.C. 5123.50.

4. SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or a significant possibility, that a certain result may occur or that certain circumstances may exist.



**COMMENT**

R.C. 2901.01.

5. DEVELOPMENTALLY DISABLED PERSON. R.C. 5123.01.

6. CARE FACILITY. R.C. 2903.33(A)(1)-(9).

7. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

8. AFFIRMATIVE DEFENSES:

(A) GENERAL. OJI-CR 417.27.

(B) RELIANCE UPON SPIRITUAL MEANS. R.C. 2903.341.

(1) BY DEFENDANT. R.C. 2903.341(B). The defendant claims that he/she/it treated a physical or mental (illness) (defect) of (*insert name of victim*) by spiritual means through prayer alone, in accordance with the (tenets) (beliefs) of a recognized religious body.

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(B).

The Committee believes that “reliance on spiritual means” is an affirmative defense because it provides an excuse or justification when the purpose of the defendant’s conduct is peculiarly within the defendant’s knowledge. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

(2) BY VICTIM. R.C. 2903.341(C). The defendant claims that (*insert name of victim*) relied upon treatment by spiritual means through prayer alone in accordance with the (tenets) (beliefs) of a recognized religious denomination.

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(C).

The Committee believes that “reliance on spiritual means” is an affirmative defense or in the nature of an affirmative defense.

(C) ORDER BY SUPERIOR AUTHORITY. R.C. 2903.341(D)(1). The defendant claims that he/she/it acted in good faith solely because he/she/it was ordered to commit the conduct by a person with (supervisory authority over him/her/it) (authority over his/her/its conduct pursuant to a contract for the provision of services).

(D) FOLLOWING INDIVIDUAL SERVICE PLAN OR ADMINISTRATIVE CODE RULE. R.C. 2903.341(D)(2). The defendant claims that he/she/it was

following the (individual service plan for [insert name of victim]) (admission, discharge, and transfer rule set forth in the Administrative Code).

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(C).

(E) ABSENCE OF MEANS TO PREVENT HARM. R.C. 2903.341(D)(3). The defendant claims that he/she/it did not have readily available a means to prevent the (harm to) (death of) (insert name of victim) and that he/she/it took reasonable steps to summon aid.

**COMMENT**

This affirmative defense is limited to a violation of R.C. 2903.341(C).

**9. ADDITIONAL FINDING:**

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2903.341(E).

10. CONCLUSION. OJI-CR 425.01.

11. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 503.35 Filing a false patient abuse or neglect complaint R.C. 2903.35**

1. The defendant is charged with filing a false patient abuse or neglect complaint. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly (made a false statement) ([swore] [affirmed] the truth of a false statement previously made) alleging (describe allegations that include the essential elements of the alleged violation of R.C. 2903.34) and the statement was made with purpose to incriminate another.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

4. CONCLUSION. OJI-CR 425.01.

5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

(Text continued on page 237)



On 10/10/2022, the undersigned, a Special Agent in Charge, advised that the following information was received from the [redacted] on 10/10/2022.

[redacted]

On 10/10/2022, the undersigned, a Special Agent in Charge, advised that the following information was received from the [redacted] on 10/10/2022.

[redacted]

On 10/10/2022, the undersigned, a Special Agent in Charge, advised that the following information was received from the [redacted] on 10/10/2022.

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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**RICO offenses**

- Acquiring or maintaining interest in enterprise or real property . . . CV 445.13
- Conducting or participating in affairs of enterprise . . . CV 445.07
- Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25
- Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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## **D**

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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Other tortious conduct claims, with . . . CV 429.11

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#### RICO offenses

Acquiring or maintaining interest in enterprise or real property . . . CV 445.13

Conducting or participating in affairs of enterprise . . . CV 445.07

Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25

Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19

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Other tortious conduct claims, with . . . CV 429.11

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[References are to civil (CV) and criminal (CR) instruction numbers.]

## DEADLY WEAPON (See WEAPONS, DANGEROUS)

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# OHIO JURY INSTRUCTIONS

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*A collection of STANDARD JURY  
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CRIMINAL INSTRUCTIONS  
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264.05	OJI-CV 431.05
264.07	OJI-CV 431.07
265.01	OJI-CV 419.01
265.02	OJI-CV 419.03
266.01	OJI-CV 533.01
266.03	OJI-CV 533.03
266.05	OJI-CV 533.05
266.07	OJI-CV 533.07
266.09	OJI-CV 533.09
266.11	OJI-CV 533.11
266.15	OJI-CV 533.13
266.17	OJI-CV 533.15
266.19	OJI-CV 533.17
266.21	OJI-CV 533.19
266.23	OJI-CV 533.21
266.25	OJI-CV 533.23
266.27	OJI-CV 533.25
271.01	OJI-CV 453.01
271.03	OJI-CV 453.03
301.01	OJI-CV 609.01
301.03	OJI-CV 609.03
301.05	OJI-CV 609.05
301.07	OJI-CV 609.07
301.09	OJI-CV 609.09
301.11	OJI-CV 609.11
301.13	OJI-CV 609.13
301.15	OJI-CV 609.15
301.17	OJI-CV 609.17
301.19	OJI-CV 609.19
301.21	OJI-CV 609.21
301.23	OJI-CV 609.23
302.01	OJI-CV 537.01
302.03	OJI-CV 453.05
302.05 (claims arising before 4/09/03)	OJI-CV 537.05 (claims arising before 4/09/03)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
302.05 (claims arising on and after 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/7/05)
302.05 (claims arising on and after 4/9/03 but before 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/9/03 but before 4/7/05)
302.07	OJI-CV 537.07
302.09	OJI-CV 537.09
302.11	OJI-CV 537.11
302.13	OJI-CV 537.13
302.15	OJI-CV 537.15
302.17	OJI-CV 537.17
305.01	OJI-CV 437.01
307.01	OJI-CV 449.01
307.03	OJI-CV 449.03
307.05	OJI-CV 449.05
307.07	OJI-CV 449.07
307.09	OJI-CV 449.09
307.11	OJI-CV 449.11
307.13	OJI-CV 449.13
307.15	OJI-CV 449.15
307.17	OJI-CV 449.17
309.01	OJI-CV 441.01
309.03	OJI-CV 441.03
309.05	OJI-CV 441.05
309.07	OJI-CV 441.07
312.01	OJI-CV 425.01
312.03	OJI-CV 425.03
312.05	OJI-CV 425.05
312.07	OJI-CV 425.07
312.09	OJI-CV 425.09
312.11	OJI-CV 425.11
312.13	OJI-CV 425.13
312.15	OJI-CV 425.15
313.01	OJI-CV 637.01
313.03	OJI-CV 637.03
313.05	OJI-CV 637.05
313.07	OJI-CV 637.07
313.09	OJI-CV 637.09
313.11	OJI-CV 637.11
315.01	OJI-CV 509.01
315.02	OJI-CV 509.03
315.03	OJI-CV 509.05
315.04	OJI-CV 509.07
317.01	OJI-CV 701.01
317.03	OJI-CV 701.03



Previous Instruction Number	New Edition Instruction Number
317.05	OJI-CV 701.05
317.07	OJI-CV 701.07
317.09	OJI-CV 701.09
317.11	OJI-CV 701.11
317.13	OJI-CV 701.13
317.15	OJI-CV 701.15
319.01	OJI-CV 415.01
319.03	OJI-CV 415.03
319.05	OJI-CV 415.05
319.07	OJI-CV 415.07
319.09	OJI-CV 415.09
319.11	OJI-CV 415.11
323.01	OJI-CV 709.01
323.03	OJI-CV 709.03
323.05	OJI-CV 709.05
323.07	OJI-CV 709.07
323.09	OJI-CV 709.09
323.11	OJI-CV 709.11
323.13	OJI-CV 709.13
323.15	OJI-CV 709.15
323.17	OJI-CV 709.17
323.19	OJI-CV 709.19
323.21	OJI-CV 709.21
323.23	OJI-CV 709.23
323.25	OJI-CV 709.25
323.27	OJI-CV 709.27
323.29	OJI-CV 709.29
323.31	OJI-CV 709.31
323.33	OJI-CV 709.33
323.35	OJI-CV 709.35
323.37	OJI-CV 709.37
323.39	OJI-CV 709.39
323.41	OJI-CV 709.41
323.43	OJI-CV 709.43
323.45	OJI-CV 709.45
323.47	OJI-CV 709.47
323.49	OJI-CV 709.49
323.51	OJI-CV 709.51
323.53	OJI-CV 709.53
323.55	OJI-CV 709.55
323.57	OJI-CV 709.57
323.59	OJI-CV 709.59
323.61	OJI-CV 709.61
323.63	OJI-CV 709.63

Previous Instruction Number	New Edition Instruction Number
323.65	OJI-CV 709.65
325.01	OJI-CV 413.01
325.03	OJI-CV 413.03
325.05	OJI-CV 413.05
325.07	OJI-CV 413.07
325.09	OJI-CV 413.09
325.11	OJI-CV 413.11
327.01	OJI-CV 613.01
327.03	OJI-CV 613.03
327.05	OJI-CV 613.05
327.07	OJI-CV 613.07
327.11	OJI-CV 613.09
327.13	OJI-CV 613.11
327.15	OJI-CV 613.13
327.17	OJI-CV 613.15
327.19	OJI-CV 613.17
327.21	OJI-CV 613.19
327.23	OJI-CV 613.21
327.25	OJI-CV 613.23
327.27	OJI-CV 613.25
327.29	OJI-CV 613.27
327.31	OJI-CV 613.29
327.33	OJI-CV 613.31
327.35	OJI-CV 613.33
329.01	OJI-CV 529.01
330.01	OJI-CV 439.01
330.03	OJI-CV 439.03
330.05	OJI-CV 439.05
330.07	OJI-CV 439.07
330.09	OJI-CV 439.09
331.01	OJI-CV 417.01
331.03	OJI-CV 417.03
331.05	OJI-CV 417.05
331.07	OJI-CV 417.07
331.09	OJI-CV 417.09
331.11	OJI-CV 417.11
331.13	OJI-CV 417.13
331.15	OJI-CV 417.15
331.17	OJI-CV 417.17
331.19	OJI-CV 417.19
333.01	OJI-CV 421.01
333.03	OJI-CV 421.03
333.05	OJI-CV 421.05
333.07	REMOVED



Previous Instruction Number	New Edition Instruction Number
345.01	OJI-CV 621.01
345.03	OJI-CV 621.03
345.05	OJI-CV 621.05
345.07	OJI-CV 621.07
345.09	OJI-CV 621.09
345.11	OJI-CV 621.11
345.13	OJI-CV 621.13
348.01	OJI-CV 705.01
348.03(A)	OJI-CV 705.03
348.03(B)	OJI-CV 705.05
348.07	OJI-CV 705.07
348.09	OJI-CV 705.09
348.11	OJI-CV 705.11
348.13	OJI-CV 705.13
348.15	OJI-CV 705.15
349.01	OJI-CV 433.01
349.03	OJI-CV 433.03
349.05	OJI-CV 433.05
349.07	OJI-CV 433.07
349.09	OJI-CV 433.09
349.11	OJI-CV 433.11
349.13	OJI-CV 433.13
351.01	OJI-CV 451.01
351.03	OJI-CV 451.03
351.05	OJI-CV 451.05
351.07	OJI-CV 451.07
351.09	OJI-CV 451.09
351.11	OJI-CV 451.11
351.13	OJI-CV 451.13
351.15	OJI-CV 451.15
351.17	OJI-CV 451.17
351.19	OJI-CV 451.19
351.21	OJI-CV 451.21
351.23	OJI-CV 451.23
354.01	OJI-CV 601.01
354.03	OJI-CV 601.03
354.05	OJI-CV 601.05
354.07	OJI-CV 601.07
354.09	OJI-CV 601.09
355.01	OJI-CV 443.01
356.01	OJI-CV 445.01
356.03	OJI-CV 445.03
356.05	OJI-CV 445.05
356.07	OJI-CV 445.07

Previous Instruction Number	New Edition Instruction Number
356.09	OJI-CV 445.09
356.11	OJI-CV 445.11
356.13	OJI-CV 445.13
356.15	OJI-CV 445.15
356.17	OJI-CV 445.17
356.19	OJI-CV 445.19
356.21	OJI-CV 445.21
356.23	OJI-CV 445.23
356.25	OJI-CV 445.25
359.01	OJI-CV 513.01
359.03	OJI-CV 513.03
359.05	OJI-CV 513.05
359.07	OJI-CV 513.07
359.09	OJI-CV 513.09
362.01	OJI-CV 505.01
362.03	OJI-CV 505.03
362.05	OJI-CV 505.05
362.07	OJI-CV 505.07
362.09	OJI-CV 505.09
362.11	OJI-CV 505.11
362.13	OJI-CV 505.13
362.15	OJI-CV 505.15
362.17	OJI-CV 505.17
362.19	OJI-CV 505.19
362.21	OJI-CV 505.21
362.23	OJI-CV 505.23
362.25	OJI-CV 505.25
362.27	OJI-CV 505.27
362.29	OJI-CV 505.29
362.31	OJI-CV 505.31
362.33	OJI-CV 505.33
362.35	OJI-CV 505.35
362.37	OJI-CV 505.37
362.39	OJI-CV 505.39
362.41	OJI-CV 505.41
362.43	OJI-CV 505.43
362.45	OJI-CV 505.45
362.47	OJI-CV 505.47
362.49	OJI-CV 505.49
362.51	OJI-CV 505.51
362.53	OJI-CV 505.53
363.01	OJI-CV 633.01
363.03	OJI-CV 633.03
363.05	OJI-CV 633.05



Previous Instruction Number	New Edition Instruction Number
363.07	OJI-CV 633.07
363.09	OJI-CV 633.09
363.13	OJI-CV 633.11
365.01	OJI-CV 427.01
365.03	OJI-CV 427.03
365.05	OJI-CV 427.05
365.07	OJI-CV 427.07
365.09	OJI-CV 427.09
365.11	OJI-CV 427.11
365.13	OJI-CV 427.13
365.15	OJI-CV 427.15
365.17	OJI-CV 427.17
365.19	OJI-CV 427.19
369.01	OJI-CV 517.01
369.03	OJI-CV 517.03
369.05	OJI-CV 517.05
369.07	OJI-CV 517.07
369.09	OJI-CV 517.09
369.11	OJI-CV 517.11
369.13	OJI-CV 517.13
369.15	OJI-CV 517.15
369.17	OJI-CV 517.17

## CRIMINAL INSTRUCTIONS CORRELATION TABLE

Previous Instruction Number	New Edition Instruction Number
1.01	OJI-CR 101.01
1.03	OJI-CR 101.03
1.05	OJI-CR 101.05
1.07	OJI-CR 101.07
1.09	OJI-CR 101.09
1.11	OJI-CR 101.11
1.13	OJI-CR 101.13
1.15	OJI-CR 101.15
1.17	OJI-CR 101.17
1.19	OJI-CR 101.19
1.21	OJI-CR 101.21
1.23	OJI-CR 101.23
1.25	OJI-CR 101.25
1.27	OJI-CR 101.27
1.29	OJI-CR 101.29
1.31	OJI-CR 101.31
1.33	OJI-CR 101.33
1.35	OJI-CR 101.35
1.37	OJI-CR 101.37
1.39	OJI-CR 101.39
1.41	OJI-CR 101.41
1.43	OJI-CR 101.43
1.45	OJI-CR 101.45
1.47	OJI-CR 101.47
1.49	OJI-CR 101.49
1.51	OJI-CR 101.51
1.53	OJI-CR 101.53
1.55	OJI-CR 101.55
1.57	OJI-CR 101.57
1.59	OJI-CR 101.59
1.61	OJI-CR 101.61
1.63	OJI-CR 101.63
1.65	OJI-CR 101.65
1.67	OJI-CR 101.67
1.69	OJI-CR 101.69
1.71	OJI-CR 101.71
1.73	OJI-CR 101.73
1.75	OJI-CR 101.75
1.77	OJI-CR 101.77
1.79	OJI-CR 101.79
1.81	OJI-CR 101.81
1.83	OJI-CR 101.83



Previous Instruction Number	New Edition Instruction Number
1.85	OJI-CR 101.85
1.87	OJI-CR 101.87
401.01	OJI-CR 301.01
401.02	OJI-CR 301.03
401.03	OJI-CR 301.05
401.04	OJI-CR 301.07
402.10	OJI-CR 401.01
402.11	OJI-CR 401.03
402.12	OJI-CR 401.05
402.20	OJI-CR 401.07
402.21	OJI-CR 401.09
402.25	OJI-CR 401.11
402.30	OJI-CR 401.13
402.50	OJI-CR 401.15
402.51	OJI-CR 401.17
402.52	OJI-CR 401.19
402.53	OJI-CR 401.21
402.60	OJI-CR 401.23
402.61	OJI-CR 401.25
402.99	OJI-CR 401.27
403.01	OJI-CR 405.01
403.03	OJI-CR 405.03
403.10	OJI-CR 405.05
403.50	OJI-CR 405.07
403.55	OJI-CR 405.09
405.01	OJI-CR 409.01
405.10	OJI-CR 409.03
405.20	OJI-CR 409.05
405.21	OJI-CR 409.07
405.22	OJI-CR 409.11
405.25	OJI-CR 409.13
405.40	OJI-CR 409.15
405.41	OJI-CR 409.17
405.50	OJI-CR 409.19
405.51	OJI-CR 409.21
405.52	OJI-CR 409.23
405.60	OJI-CR 409.25
405.63	OJI-CR 409.27
405.64	OJI-CR 409.29
405.65	OJI-CR 409.31
405.91	OJI-CR 409.33
407.01	OJI-CR 413.01
407.03	OJI-CR 413.03
407.05	OJI-CR 413.05

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
407.10	OJI-CR 413.07
409.01	OJI-CR 417.01
409.02	OJI-CR 417.03
409.03	OJI-CR 417.05
409.05	OJI-CR 417.07
409.07	OJI-CR 417.09
409.11	OJI-CR 417.11
409.13	OJI-CR 417.13
409.15	OJI-CR 417.15
409.21	OJI-CR 417.17
409.31	OJI-CR 417.19
409.50	OJI-CR 417.21
409.55	OJI-CR 417.23
409.56	OJI-CR 417.25
409.57	OJI-CR 417.27
409.60	OJI-CR 417.29
409.65	OJI-CR 417.31
409.67	OJI-CR 417.33
411.01	OJI-CR 421.01
411.03	OJI-CR 421.03
411.05	OJI-CR 421.05
411.07	OJI-CR 421.07
411.10 (offenses committed before 10/27/00)	OJI-CR 421.09 (offenses committed before 10/27/00)
411.10 (offenses committed on and after 10/27/00)	OJI-CR 421.09 (offenses committed on and after 10/27/00)
411.11 (offenses committed before 10/27/00)	OJI-CR 421.11 (offenses committed before 10/27/00)
411.11 (offenses committed on and after 10/27/00)	OJI-CR 421.11 (offenses committed on and after 10/27/00)
411.19	OJI-CR 421.13
411.20	OJI-CR 421.15
411.25	OJI-CR 421.17
411.31	OJI-CR 421.19
411.33	OJI-CR 421.21
411.35	OJI-CR 421.23
411.51	OJI-CR 421.25
411.53	OJI-CR 421.27
411.55	OJI-CR 421.29
413.01	OJI-CR 425.01
413.05	OJI-CR 425.03
413.10	OJI-CR 425.05
413.11	OJI-CR 425.07
413.21	OJI-CR 425.09



Previous Instruction Number	New Edition Instruction Number
413.23	OJI-CR 425.11
413.30	OJI-CR 425.13
413.35	OJI-CR 425.15
413.37	OJI-CR 425.17
413.38	OJI-CR 425.19
413.39	OJI-CR 425.21
413.40	OJI-CR 425.23
413.43	OJI-CR 425.25
413.45	OJI-CR 425.27
413.47	OJI-CR 425.29
413.49	OJI-CR 425.31
413.50	OJI-CR 425.33
413.60	OJI-CR 425.35
413.70	OJI-CR 425.37
413.80	OJI-CR 425.39
413.81	OJI-CR 425.41
413.90	OJI-CR 425.43
415.01	OJI-CR 429.01
415.03	OJI-CR 429.03
415.05	OJI-CR 429.05
415.10	OJI-CR 429.07
415.50	OJI-CR 429.09
415.75	OJI-CR 429.11
415.90	OJI-CR 429.13
503.01	OJI-CR 503.01
503.011	OJI-CR 503.011
503.02 (offenses committed on and after 9/6/96 but before 6/30/98)	OJI-CR 503.02 (offenses committed on and after 9/6/96 but before 6/30/98)
503.02 (offenses committed on and after 6/30/98)	OJI-CR 503.02 (offenses committed on and after 6/30/98)
503.03 (offenses committed on and after 9/6/96)	OJI-CR 503.03 (offenses committed on and after 9/6/96)
503.04 (offenses committed on and after 9/6/96 but before 3/23/00)	OJI-CR 503.04 (offenses committed on and after 9/6/96 but before 3/23/00)
503.04 (offenses committed on and after 3/23/00)	OJI-CR 503.04 (offenses committed on and after 3/23/00)
503.041	OJI-CR 503.041
503.05	OJI-CR 503.05
503.06 (offenses committed before 3/23/00)	OJI-CR 503.06 (offenses committed before 3/23/00)
503.06 (offenses committed on and after 3/23/00)	OJI-CR 503.06 (offenses committed on and after 3/23/00)
503.07 (offenses committed on and after 9/6/96) [section repealed 3/23/00]	OJI-CR 503.07 (offenses committed on and after 9/6/96)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
503.08 (offenses committed on and after 9/6/96 but before 3/23/00)	OJI-CR 503.08 (offenses committed on and after 9/6/96 but before 3/23/00)
503.08 (offenses committed on and after 3/23/00)	OJI-CR 503.08 (offenses committed on and after 3/23/00)
503.11(A) (offenses committed on and after 9/6/96) [Rev. 2-24-07]	OJI-CR 503.11(A) (offenses committed on and after 9/6/96)
503.11(B) (offenses committed on and after 3/23/00) [Rev. 1-20-07]	OJI-CR 503.11(B) (offenses committed on and after 3/23/00)
503.12	OJI-CR 503.12
503.13	OJI-CR 503.13
503.14 (offenses committed on and after 9/6/96)	OJI-CR 503.14 (offenses committed on and after 9/6/96)
503.15 (offenses committed on and after 8/25/99)	OJI-CR 503.15 (offenses committed on and after 8/25/99)
503.16	OJI-CR 503.16
503.21 (offenses committed on and after 9/6/96)	OJI-CR 503.21 (offenses committed on and after 9/6/96)
503.22 (offenses committed on and after 9/6/96)	OJI-CR 503.22 (offenses committed on and after 9/6/96)
503.31	OJI-CR 503.31
503.34	OJI-CR 503.34
503.35	OJI-CR 503.35
503.211 (offenses committed before 3/10/00)	OJI-CR 503.211 (offenses committed before 3/10/00)
503.211 (offenses committed on and after 3/10/00)	OJI-CR 503.211 (offenses committed on and after 3/ 10/00 but before 1/1/08) OJI-CR 503.211 (offenses committed on and after 1/1/ 08)
503.214	OJI-CR 503.214
505.01(A) (offenses committed before 7/1/96)	OJI-CR 505.01(A) (offenses committed before 7/1/96)
505.01(A) (offenses committed on and after 7/1/96) [Rev. 1-20-07]	OJI-CR 505.01(A) (offenses committed on and after 7/1/96)
505.01(B) (offenses committed before 7/1/96)	OJI-CR 505.01(B) (offenses committed before 7/1/96)
505.01(B) (offenses committed on and after 7/1/96)	OJI-CR 505.01(B) (offenses committed on and after 7/1/96)
505.02 (offenses committed before 7/1/96)	OJI-CR 505.02 (offenses committed before 7/1/96)
505.02 (offenses committed on and after 7/1/96)	OJI-CR 505.02 (offenses committed on and after 7/1/96)
505.03	OJI-CR 505.03
505.04 (offenses committed before 7/1/96)	OJI-CR 505.04 (offenses committed before 7/1/96)
505.05 (offenses committed before 7/1/96)	OJI-CR 505.05
505.05	OJI-CR 505.05



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
505.11 (offenses committed before 7/1/96)	OJI-CR 505.11 (offenses committed before 7/1/96)
505.11 (offenses committed on and after 7/1/96)	OJI-CR 505.11 (offenses committed on and after 7/1/96)
505.12	OJI-CR 505.12
505.22 (offenses committed before 7/1/96)	OJI-CR 505.22 (offenses committed before 7/1/96)
505.22 (offenses committed on and after 7/1/96)	OJI-CR 505.22 (offenses committed on and after 7/1/96)
507.02(A)(1) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(1) (offenses committed before 7/1/96)
507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)
507.02(A)(1) (offenses committed on and after 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 3/10/98)
507.02(A)(2) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed before 7/1/96)
507.02(A)(2) (offenses committed on and after 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed on and after 7/1/96)
507.03 (offenses committed before 7/1/96)	OJI-CR 507.03 (offenses committed before 7/1/96)
507.03 (offenses committed on and after 7/1/96)	OJI-CR 507.03 (offenses committed on and after 7/1/96)
507.04 (offenses committed before 7/1/96)	OJI-CR 507.04 (offenses committed before 7/1/96)
507.04 (offenses committed on and after 7/1/96)	OJI-CR 507.04 (offenses committed on and after 7/1/96)
507.05 (offenses committed before 7/1/96)	OJI-CR 507.05 (offenses committed before 7/1/96)
507.05 (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.05 (offenses committed on and after 7/1/96 but before 3/10/98)
507.05 (offenses committed on and after 3/10/98)	OJI-CR 507.05 (offenses committed on and after 3/10/98)
507.06 (offenses committed before 7/1/96)	OJI-CR 507.06 (offenses committed before 7/1/96)
507.06 (offenses committed on and after 7/1/96)	OJI-CR 507.06 (offenses committed on and after 7/1/96)
507.07 (offenses committed before 3/22/01)	OJI-CR 507.07 (offenses committed before 3/22/01)
507.07 (offenses committed on and after 3/22/01 but before 5/7/02)	OJI-CR 507.07 (offenses committed on and after 3/22/01 but before 5/7/02)
507.07 (offenses committed on and after 5/7/02 but before 7/31/03)	OJI-CR 507.07 (offenses committed on and after 5/7/02 but before 7/31/03)
507.07 (offenses committed on and after 7/31/03)	OJI-CR 507.07 (offenses committed on and after 7/31/03)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
507.08 (offenses committed before 1/30/98)	OJI-CR 507.08 (offenses committed before 1/30/98)
507.08 (offenses committed on and after 1/30/98)	OJI-CR 507.08 (offenses committed on and after 1/30/98)
507.09 (offenses committed before 9/26/05)	OJI-CR 507.09 (offenses committed before 9/26/05)
507.09 (offenses committed on and after 9/26/05)	OJI-CR 507.09 (offenses committed on and after 9/26/05)
507.12(A)(1) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(1) (offenses committed before 9/3/96)
507.12(A)(2) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(2) (offenses committed before 9/3/96)
507.21 (offenses committed before 7/1/96)	OJI-CR 507.21 (offenses committed before 7/1/96)
507.21 (offenses committed on and after 7/1/96)	OJI-CR 507.21 (offenses committed on and after 7/1/96)
507.22 (offenses committed before 7/1/96)	OJI-CR 507.22 (offenses committed before 7/1/96)
507.22 (offenses committed on and after 7/1/96)	OJI-CR 507.22 (offenses committed on and after 7/1/96)
507.23	OJI-CR 507.23
507.24	OJI-CR 507.24
507.25 (offenses committed before 7/1/96)	OJI-CR 507.25 (offenses committed before 7/1/96)
507.31 (offenses committed before 7/1/96)	OJI-CR 507.31 (offenses committed before 7/1/96)
507.31 (offenses committed on and after 7/1/96 but before 1/1/04)	OJI-CR 507.31 (offenses committed on and after 7/1/96 but before 1/1/04)
507.31 (offenses committed on and after 1/1/04)	OJI-CR 507.31 (offenses committed on and after 1/1/04)
507.32	OJI-CR 507.32
507.33	OJI-CR 507.33
507.34(A) (offenses committed before 7/1/96)	OJI-CR 507.34(A) (offenses committed before 7/1/96)
507.34(A) (offenses committed on and after 7/1/96)	OJI-CR 507.34(A) (offenses committed on and after 7/1/96)
507.34(B) (offenses committed before 7/1/96)	OJI-CR 507.34(B) (offenses committed before 7/1/96)
507.34(B) (offenses committed on and after 7/1/96)	OJI-CR 507.34(B) (offenses committed on and after 7/1/96)
507.42 (offenses committed before 7/1/96)	OJI-CR 507.42 (offenses committed before 7/1/96)
507.42 (offenses committed on and after 7/1/96)	OJI-CR 507.42 (offenses committed on and after 7/1/96)
507.53(A)	OJI-CR 507.53(A)
507.53(B)	OJI-CR 507.53(B)
507.53(C)	OJI-CR 507.53(C)



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507.71 (offenses committed on and after 1/1/97)	OJI-CR 507.71 (offenses committed on and after 1/1/97)
507.72 (offenses committed on and after 1/1/97)	OJI-CR 507.72 (offenses committed on and after 1/1/97)
507.241 (offenses committed before 7/1/96)	OJI-CR 507.241 (offenses committed before 7/1/96)
507.241 (offenses committed on and after 7/1/96)	OJI-CR 507.241 (offenses committed on and after 7/1/96)
507.311	OJI-CR 507.311
507.321 (offenses committed before 7/1/96)	OJI-CR 507.321 (offenses committed before 7/1/96)
507.321 (offenses committed on and after 7/1/96)	OJI-CR 507.321 (offenses committed on and after 7/1/96)
507.322 (offenses committed before 7/1/96)	OJI-CR 507.322 (offenses committed before 7/1/96)
507.322 (offenses committed on and after 7/1/96)	OJI-CR 507.322 (offenses committed on and after 7/1/96)
507.323 (offenses committed before 7/1/96)	OJI-CR 507.323 (offenses committed before 7/1/96)
507.323 (offenses committed on and after 7/1/96)	OJI-CR 507.323 (offenses committed on and after 7/1/96)
509.02 (offenses committed before 7/1/96)	OJI-CR 509.02 (offenses committed before 7/1/96)
509.02 (offenses committed on and after 7/1/96)	OJI-CR 509.02 (offenses committed on and after 7/1/96)
509.03 (offenses committed before 7/1/96)	OJI-CR 509.03 (offenses committed before 7/1/96)
509.03 (offenses committed on and after 7/1/96)	OJI-CR 509.03 (offenses committed on and after 7/1/96)
509.04 (offenses committed before 7/1/96)	OJI-CR 509.04 (offenses committed before 7/1/96)
509.04 (offenses committed on and after 7/1/96)	OJI-CR 509.04 (offenses committed on and after 7/1/96)
509.05(A) (offenses committed before 7/1/96)	OJI-CR 509.05(A) (offenses committed before 7/1/96)
509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(A) (offenses committed on and after 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 9/30/98)
509.05(B) (offenses committed before 7/1/96)	OJI-CR 509.05(B) (offenses committed before 7/1/96)
509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(B) (offenses committed on and after 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 9/30/98)
509.05(C) (offenses committed before 7/1/96)	OJI-CR 509.05(C) (offenses committed before 7/1/96)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
509.05(C) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(C) (offenses committed on and after 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 9/30/98)
509.05(D) (offenses committed before 7/1/96)	OJI-CR 509.05(D) (offenses committed before 7/1/96)
509.05(D) (offenses committed on and after 7/1/96)	OJI-CR 509.05(D) (offenses committed on and after 7/1/96)
509.06 (offenses committed before 7/1/96)	OJI-CR 509.06 (offenses committed before 7/1/96)
509.06 (offenses committed on and after 7/1/96)	OJI-CR 509.06 (offenses committed on and after 7/1/96)
509.07 (offenses committed before 7/1/96)	OJI-CR 509.07 (offenses committed before 7/1/96)
509.07 (offenses committed on and after 7/1/96)	OJI-CR 509.07 (offenses committed on and after 7/1/96)
509.08 (offenses committed before 7/1/96)	OJI-CR 509.08 (offenses committed before 7/1/96)
509.08 (offenses committed on or after 7/1/96)	OJI-CR 509.08 (offenses committed on or after 7/1/96)
509.22	OJI-CR 509.22
509.23	OJI-CR 509.23
509.24	OJI-CR 509.24
511.01(A)	OJI-CR 511.01(A)
511.01(B)	OJI-CR 511.01(B)
511.02	OJI-CR 511.02
511.11	OJI-CR 511.11
511.12	OJI-CR 511.12
511.13(A)	OJI-CR 511.13(A)
511.13(B)	OJI-CR 511.13(B)
511.21	OJI-CR 511.21
511.31	OJI-CR 511.31
511.32	OJI-CR 511.32
511.211	OJI-CR 511.211
513.02 (offenses committed before 7/1/96)	OJI-CR 513.02 (offenses committed before 7/1/96)
513.02 (offenses committed on and after 7/1/96)	OJI-CR 513.02 (offenses committed on and after 7/1/96)
513.03 (offenses committed before 7/1/96)	OJI-CR 513.03 (offenses committed before 7/1/96)
513.03 (offenses committed on and after 7/1/96)	OJI-CR 513.03 (offenses committed on and after 7/1/96)
513.04 (offenses committed before 7/1/96)	OJI-CR 513.04 (offenses committed before 7/1/96)
513.04 (offenses committed on and after 7/1/96)	OJI-CR 513.04 (offenses committed on and after 7/1/96)



Previous Instruction Number	New Edition Instruction Number
513.041 (offenses committed on and after 7/1/96)	OJI-CR 513.041 (offenses committed on and after 7/1/96)
513.11 (offenses committed before 7/1/96)	OJI-CR 513.11 (offenses committed before 7/1/96)
513.11 (offenses committed on and after 7/1/96)	OJI-CR 513.11 (offenses committed on and after 7/1/96)
513.21 (offenses committed before 7/1/96)	OJI-CR 513.21 (offenses committed before 7/1/96)
513.21 (offenses committed on and after 7/1/96)	OJI-CR 513.21 (offenses committed on and after 7/1/96)
513.31(A) (offenses committed before 7/1/96)	OJI-CR 513.31(A) (offenses committed before 7/1/96)
513.31(A) (offenses committed on and after 7/1/96)	OJI-CR 513.31(A) (offenses committed on and after 7/1/96)
513.31(B)	OJI-CR 513.31(B)
513.32 (offenses committed before 7/1/96)	OJI-CR 513.32 (offenses committed before 7/1/96)
513.32 (offenses committed on and after 7/1/96)	OJI-CR 513.32 (offenses committed on and after 7/1/96)
513.33 (offenses committed on and after 3/31/97)	OJI-CR 513.33 (offenses committed on and after 3/31/97)
513.34 (offenses committed on and after 3/31/97)	OJI-CR 513.34 (offenses committed on and after 3/31/97)
513.40	OJI-CR 513.40
513.41 (offenses committed before 7/1/96)	OJI-CR 513.41 (offenses committed before 7/1/96)
513.42 (offenses committed before 7/1/96)	OJI-CR 513.42 (offenses committed before 7/1/96)
513.42 (offenses committed on and after 7/1/96)	OJI-CR 513.42 (offenses committed on and after 7/1/96)
513.43 (offenses committed before 7/1/96)	OJI-CR 513.43 (offenses committed before 7/1/96)
513.43 (offenses committed on and after 7/1/96)	OJI-CR 513.43 (offenses committed on and after 7/1/96)
513.44	OJI-CR 513.44
513.45 (offenses committed before 7/1/96)	OJI-CR 513.45 (offenses committed before 7/1/96)
513.45 (offenses committed on and after 7/1/96)	OJI-CR 513.45 (offenses committed on and after 7/1/96)
513.46(A) (offenses committed before 10/29/95)	OJI-CR 513.46(A) (offenses committed before 10/29/95)
513.46(B) (offenses committed before 10/29/95)	OJI-CR 513.46(B) (offenses committed before 10/29/95)
513.46(B) (offenses committed on and after 9/26/96)	OJI-CR 513.46(B) (offenses committed on and after 9/26/96)
513.46(C) (offenses committed on and after 9/26/96)	OJI-CR 513.46(C) (offenses committed on and after 9/26/96)

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513.47 (offenses committed before 7/1/96)	OJI-CR 513.47 (offenses committed before 7/1/96)
513.47 (offenses committed on and after 7/1/96)	OJI-CR 513.47 (offenses committed on and after 7/1/96)
513.48 (offenses committed before 7/1/96)	OJI-CR 513.48 (offenses committed before 7/1/96)
513.48 (offenses committed on and after 7/1/96)	OJI-CR 513.48 (offenses committed on and after 7/1/96)
513.51 (offenses committed before 7/1/96)	OJI-CR 513.51 (offenses committed before 7/1/96)
513.51 (offenses committed on or after 7/1/96)	OJI-CR 513.51 (offenses committed on or after 7/1/96)
513.81 (offenses committed before 7/1/96)	OJI-CR 513.81 (offenses committed before 7/1/96)
513.401	OJI-CR 513.401
515.02	OJI-CR 515.02
515.03	OJI-CR 515.03
515.04	OJI-CR 515.04
515.05	OJI-CR 515.05
515.05(A) (offenses committed before 7/1/96)	OJI-CR 515.05(A) (offenses committed before 7/1/96)
515.05(B) (offenses committed on and after 7/1/96)	OJI-CR 515.05(B) (offenses committed on and after 7/1/96)
515.06 (offenses committed before 7/1/96)	OJI-CR 515.06 (offenses committed before 7/1/96)
515.07	OJI-CR 515.07
515.09	OJI-CR 515.09
515.10(A)	OJI-CR 515.10(A)
515.10(C)	OJI-CR 515.10(C)
515.11	OJI-CR 515.11
515.12 (offenses committed before 7/1/96)	OJI-CR 515.12 (offenses committed before 7/1/96)
517.01	OJI-CR 517.01
517.02(A)	OJI-CR 517.02(A)
517.02(B)	OJI-CR 517.02(B)
517.03	OJI-CR 517.03
517.11(A)	OJI-CR 517.11(A)
517.11(B)	OJI-CR 517.11(B)
517.12	OJI-CR 517.12
517.13	OJI-CR 517.13
517.21(A)	OJI-CR 517.21(A)
517.21(B)	OJI-CR 517.21(B)
517.31	OJI-CR 517.31
517.32	OJI-CR 517.32
517.40	OJI-CR 517.40



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517.41	OJI-CR 517.41
517.47	OJI-CR 517.47
519.01	OJI-CR 519.01
519.12(A)	OJI-CR 519.12(A)
519.12(B)	OJI-CR 519.12(B)
519.13(A)	OJI-CR 519.13(A)
519.13(B)	OJI-CR 519.13(B)
519.14	OJI-CR 519.14
519.21(A)	OJI-CR 519.21(A)
519.21(B)	OJI-CR 519.21(B)
519.22	OJI-CR 519.22
519.23(A)	OJI-CR 519.23(A)
519.23(B)	OJI-CR 519.23(B)
519.24	OJI-CR 519.24
519.24(A)(3) (offenses committed on and after 1/1/02)	OJI-CR 519.24(A)(3) (offenses committed on and after 1/1/02)
519.25	OJI-CR 519.25
519.27	OJI-CR 519.27
519.231	OJI-CR 519.231
521.02	OJI-CR 521.02
521.03 (offenses committed before 9/3/96)	OJI-CR 521.03 (offenses committed before 9/3/96)
521.03 (offenses committed on and after 9/3/96 and before 11/6/96)	OJI-CR 521.03 (offenses committed on and after 9/3/96 and before 11/6/96)
521.03 (offenses committed on and after 11/6/96)	OJI-CR 521.03 (offenses committed on and after 11/6/96)
521.04 (offenses committed before 9/3/96)	OJI-CR 521.04 (offenses committed before 9/3/96)
521.04 (offenses committed on and after 9/3/96)	OJI-CR 521.04 (offenses committed on and after 9/3/96)
521.05	OJI-CR 521.05
521.11	OJI-CR 521.11
521.12	OJI-CR 521.12
521.13 (offenses committed before 7/1/96)	OJI-CR 521.13 (offenses committed before 7/1/96)
521.13 (offenses committed on and after 7/1/96 and before 10/1/97)	OJI-CR 521.13 (offenses committed on and after 7/1/96 and before 10/1/97)
521.13 (offenses committed on and after 10/1/97)	OJI-CR 521.13 (offenses committed on and after 10/1/97)
521.14	OJI-CR 521.14
521.21	OJI-CR 521.21
521.22(A)	OJI-CR 521.22(A)
521.22(B)	OJI-CR 521.22(B)
521.22(C)	OJI-CR 521.22(C)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
521.22(D) (offenses committed before 3/18/97)	OJI-CR 521.22(D) (offenses committed before 3/18/97)
521.22(D) (offenses committed on and after 3/18/97)	OJI-CR 521.22(D) (offenses committed on and after 3/18/97)
521.22(E)	OJI-CR 521.22(E)
521.24	OJI-CR 521.24
521.31	OJI-CR 521.31
521.32 (offenses committed before 7/1/96)	OJI-CR 521.32 (offenses committed before 7/1/96)
521.32 (offenses committed on and after 7/1/96 and before 12/31/97)	OJI-CR 521.32 (offenses committed on and after 7/1/96 and before 12/31/97)
521.32 (offenses committed on and after 12/31/97)	OJI-CR 521.32 (offenses committed on and after 12/31/97)
521.321	OJI-CR 521.321
521.33 (offenses committed before 7/1/96)	OJI-CR 521.33 (offenses committed before 7/1/96)
521.33 (offenses committed on and after 7/1/96 but before 9/16/97)	OJI-CR 521.33 (offenses committed on and after 7/1/96 but before 9/16/97)
521.33 (offenses committed on and after 9/16/97)	OJI-CR 521.33 (offenses committed on and after 9/16/97)
521.34(A)(1)	OJI-CR 521.34(A)(1)
521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)	OJI-CR 521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)
521.35(A)	OJI-CR 521.35(A)
521.35(B)	OJI-CR 521.35(B)
521.36	OJI-CR 521.36
521.38	OJI-CR 521.38 (offenses committed on and after 6/11/97 but before 4/4/07) OJI-CR 521.38 (offenses committed on and after 4/4/07)
521.41	OJI-CR 521.41
521.42	OJI-CR 521.42
521.43(A)	OJI-CR 521.43(A)
521.43(B)	OJI-CR 521.43(B)
521.43(C)	OJI-CR 521.43(C)
521.44(A)	OJI-CR 521.44(A)
521.44(B)	OJI-CR 521.44(B)
521.44(C)	OJI-CR 521.44(C)
521.44(D)	OJI-CR 521.44(D)
521.44(E)	OJI-CR 521.44(E)
521.45	OJI-CR 521.45
521.51(B)	OJI-CR 521.51(B)
521.51(C)	OJI-CR 521.51(C)
521.51(D)	OJI-CR 521.51(D)
521.51(E)	OJI-CR 521.51(E)



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521.52	OJI-CR 521.52
521.331	OJI-CR 521.331
523.01 (offenses committed before 7/1/96)	OJI-CR 523.01 (offenses committed before 7/1/96)
523.01 (offenses committed on and after 7/1/96)	OJI-CR 523.01 (offenses committed on and after 7/1/96)
523.02 (offenses committed before 7/1/96)	OJI-CR 523.02 (offenses committed before 7/1/96)
523.02 (offenses committed on and after 7/1/96)	OJI-CR 523.02 (offenses committed on and after 7/1/96)
523.03 (offenses committed before 7/1/96)	OJI-CR 523.03 (offenses committed before 7/1/96)
523.03 (offenses committed on and after 7/1/96)	OJI-CR 523.03 (offenses committed on and after 7/1/96)
523.12	OJI-CR 523.12
523.13 (offenses committed before 7/1/96)	OJI-CR 523.13 (offenses committed before 7/1/96)
523.13(A) (offenses committed on and after 7/1/96)	OJI-CR 523.13(A) (offenses committed on and after 7/1/96)
523.13(B) (offenses committed on and after 7/1/96)	OJI-CR 523.13(B) (offenses committed on and after 7/1/96)
523.15	OJI-CR 523.15
523.16	OJI-CR 523.16
523.17 (offenses committed before 7/1/96)	OJI-CR 523.17 (offenses committed before 7/1/96)
523.17 (offenses committed on and after 7/1/96)	OJI-CR 523.17 (offenses committed on and after 7/1/96)
523.19	OJI-CR 523.19
523.20 (offenses committed before 7/1/96)	OJI-CR 523.20 (offenses committed before 7/1/96)
523.20 (offenses committed on and after 7/1/96)	OJI-CR 523.20 (offenses committed on and after 7/1/96)
523.21 (offenses committed before 11/9/95)	OJI-CR 523.21 (offenses committed before 11/9/95)
523.21 (offenses committed on and after 11/9/95 but before 7/1/96)	OJI-CR 523.21 (offenses committed on and after 11/9/95 but before 7/1/96)
523.21 (offenses committed on and after 7/1/96)	OJI-CR 523.21 (offenses committed on and after 7/1/96)
523.211(B)	OJI-CR 523.211(B)
523.24 (offenses committed before 7/1/96)	OJI-CR 523.24 (offenses committed before 7/1/96)
523.24 (offenses committed on and after 7/1/96)	OJI-CR 523.24 (offenses committed on and after 7/1/96)
523.32(A)(1)	OJI-CR 523.32(A)(1)
523.32(A)(2)	OJI-CR 523.32(A)(2)
523.32(A)(3)	OJI-CR 523.32(A)(3)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
523.42 (offenses committed on and after 1/1/99)	OJI-CR 523.42 (offenses committed on and after 1/1/99)
523.44	OJI-CR 523.44
523.121 (offenses committed before 7/1/96)	OJI-CR 523.121 (offenses committed before 7/1/96)
523.121 (offenses committed on and after 7/1/96)	OJI-CR 523.121 (offenses committed on and after 7/1/96)
523.122 (offenses committed before 7/1/96)	OJI-CR 523.122 (offenses committed before 7/1/96)
523.122 (offenses committed on and after 7/1/96 but before 3/18/97)	OJI-CR 523.122 (offenses committed on and after 7/1/96 but before 3/18/97)
523.122 (offenses committed on and after 3/18/97 but before 8/6/99)	OJI-CR 523.122 (offenses committed on and after 3/18/97 but before 8/6/99)
523.122 (offenses committed on and after 8/6/99)	OJI-CR 523.122 (offenses committed on and after 8/6/99)
523.123(A)	OJI-CR 523.123(A)
523.123(B)	OJI-CR 523.123(B)
523.131	OJI-CR 523.131
523.161 (offenses committed before 7/1/96)	OJI-CR 523.161 (offenses committed before 7/1/96)
523.161 (offenses committed on and after 7/1/96 but before 8/6/99)	OJI-CR 523.161 (offenses committed on and after 7/1/96 but before 8/6/99)
523.161 (offenses committed on and after 8/6/99)	OJI-CR 523.161 (offenses committed on and after 8/6/99)
525.02 (offenses committed before 7/1/96)	OJI-CR 525.02 (offenses committed before 7/1/96)
525.02 (offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/1/96 but before 7/22/98)
525.02 (offenses committed on and after 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/22/98)
525.03 (offenses committed before 7/1/96)	OJI-CR 525.03 (offenses committed before 7/1/96)
525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)
525.03 (offenses committed on and after 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 2/13/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.041	OJI-CR 525.041
525.05 (offenses committed before 3/23/2000)	OJI-CR 525.05 (offenses committed before 3/23/2000)
525.05 (offenses committed on and after 3/23/2000)	OJI-CR 525.05 (offenses committed on and after 3/23/2000)
525.06	OJI-CR 525.06
525.07	OJI-CR 525.07



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
525.09(A) (offenses committed before 7/22/98)	OJI-CR 525.09(A) (offenses committed before 7/22/98)
525.09(A) (offenses committed on and after 7/22/98)	OJI-CR 525.09(A) (offenses committed on and after 7/22/98)
525.09(B)	OJI-CR 525.09(B)
525.11 (offenses committed before 7/1/96)	OJI-CR 525.11(offenses committed before 7/1/96)
525.11 (offenses committed on and after 7/1/96 but before 6/20/97)	OJI-CR 525.11 (offenses committed on and after 7/1/96 but before 6/20/97)
525.11 (offenses committed on and after 6/20/97)	OJI-CR 525.11 (offenses committed on and after 6/20/97)
525.12 (offenses committed before 7/1/96)	OJI-CR 525.12 (offenses committed before 7/1/96)
525.12 (offenses committed on and after 7/1/96)	OJI-CR 525.12 (offenses committed on and after 7/1/96)
525.13 (offenses committed before 7/1/96)	OJI-CR 525.13 (offenses committed before 7/1/96)
525.13 (offenses committed on and after 7/1/96)	OJI-CR 525.13 (offenses committed on and after 7/1/96)
525.14(C) (offenses committed before 7/1/96)	OJI-CR 525.14(C) (offenses committed before 7/1/96)
525.14(C) (offenses committed on and after 7/1/96)	OJI-CR 525.14(C) (offenses committed on and after 7/1/96)
525.22(offenses committed before 7/1/96)	OJI-CR 525.22 (offenses committed before 7/1/96)
525.22(offenses committed on and after 7/1/96)	OJI-CR 525.22(offenses committed on and after 7/1/96)
525.23 (offenses committed before 7/1/96)	OJI-CR 525.23 (offenses committed before 7/1/96)
525.23(offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/1/96 but before 7/22/98)
525.23(offenses committed on and after 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/22/98)
525.24	OJI-CR 525.24
525.31(offenses committed before 7/1/96)	OJI-CR 525.31(offenses committed before 7/1/96)
525.31(offenses committed on and after 7/1/96)	OJI-CR 525.31(offenses committed on and after 7/1/96)
525.32 (offenses committed before 7/1/96)	OJI-CR 525.32 (offenses committed before 7/1/96)
525.32(offenses committed on and after 7/1/96 but before 1/1/97)	OJI-CR 525.32(offenses committed on and after 7/1/96 but before 1/1/97)
525.32(offenses committed on and after 1/1/97)	OJI-CR 525.32(offenses committed on and after 1/1/97)
525.33	OJI-CR 525.33
525.36 (offenses committed before 7/1/96)	OJI-CR 525.36 (offenses committed before 7/1/96)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
525.36 (offenses committed on and after 7/1/96)	OJI-CR 525.36 (offenses committed on and after 7/1/96)
525.37(offenses committed before 7/1/96)	OJI-CR 525.37(offenses committed before 7/1/96)
525.37 (offenses committed on and after 7/1/96)	OJI-CR 525.37 (offenses committed on and after 7/1/96)
525.42	OJI-CR 525.42
527.01	OJI-CR 527.01
527.02(B)(1)	OJI-CR 527.02(B)(1)
527.02(B)(2)	OJI-CR 527.02(B)(2)
527.02(B)(3) (offenses committed on and after 3/15/01)	OJI-CR 527.02(B)(3) (offenses committed on and after 3/15/01)
527.02(C)	OJI-CR 527.02(C)
527.03	OJI-CR 527.03
527.11	OJI-CR 527.11
527.12	OJI-CR 527.12
527.13	OJI-CR 527.13
527.21	OJI-CR 527.21
527.24(B)	OJI-CR 527.24(B)
527.24(C)	OJI-CR 527.24(C)
527.27(A) (offenses committed on and after 10/09/01)	OJI-CR 527.27(A) (offenses committed on and after 10/09/01)
527.27(B) (offenses committed on and after 10/09/01)	OJI-CR 527.27(B) (offenses committed on and after 10/09/01)
533.92	OJI-CR 533.92
547.11(A)(1)(offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(1)(offenses committed on and after 1/1/04)
547.11(A)(2)-(6) (offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(2)-(6) (offenses committed on and after 1/1/04)
547.11(B)(offenses committed on and after 1/1/04)	OJI-CR 547.11(B)(offenses committed on and after 1/1/04)
549.01(offenses committed on and after 1/1/04)	OJI-CR 709.01(offenses committed on and after 1/1/04)
549.02	OJI-CR 749.02
549.021	OJI-CR 749.021
549.03	OJI-CR 749.03
549.62(A)	OJI-CR 749.62(A)
549.62(B)	OJI-CR 749.62(B)
549.62(C)	OJI-CR 749.62(C)
549.62(D)	OJI-CR 749.62(D)
550.02 (offenses committed before 7/1/97)	OJI-CR 550.02 (offenses committed before 7/1/97)
550.04 (offenses committed on and after 7/1/97 but before 7/13/030)	OJI-CR 550.04 (offenses committed on and after 7/1/97 but before 7/13/030)
550.04 (offenses committed on and after 7/31/03)	OJI-CR 550.04 (offenses committed on and after 7/31/03)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
550.041 (offenses committed on and after 7/31/04)	OJI-CR 550.041 (offenses committed on and after 7/31/04)
550.05 (offenses committed before 7/1/97)	OJI-CR 550.05 (offenses committed before 7/1/97)
550.05 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.05 (offenses committed on and after 7/1/97 but before 7/31/03)
550.05 (offenses committed on and after 7/31/03 but before 4/29/05)	OJI-CR 550.05 (offenses committed on and after 7/31/03 but before 4/29/05)
550.05 (offenses committed on and after 4/2/9/05)	OJI-CR 550.05 (offenses committed on and after 4/2/9/05)
550.06 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/1/97 but before 7/31/03)
550.06 (offenses committed on and after 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/31/03)
551.01	OJI-CR 551.01
551.03	OJI-CR 551.03
551.05	OJI-CR 551.05
551.07	OJI-CR 551.07
551.09	OJI-CR 551.09
551.11	OJI-CR 551.11
555.03	OJI-CR 559.03
710.11(A)(offenses committed before 1/1/04)	OJI-CR 710.11(A)(offenses committed before 1/1/04)
710.11(A) (offenses committed on and after 1/1/04)	OJI-CR 710.11(A) (offenses committed on and after 1/1/04)
710.11(B)(offenses committed before 1/1/04)	OJI-CR 710.11(B)(offenses committed before 1/1/04)
710.11(B) (offenses committed on and after 1/1/04)	OJI-CR 710.11(B) (offenses committed on and after 1/1/04)
710.12(A)(1)(a)(offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(a)(offenses committed before 1/1/04)
710.12(A)(1)(a) (offenses committed on and after 6/1/04)	OJI-CR 710.12(A)(1)(a) (offenses committed on and after 6/1/04)
710.12(A)(1)(b) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed before 1/1/04)
710.12(A)(1)(b) (offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed on and after 1/1/04)
710.12(A)(2) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(2) (offenses committed before 1/1/04)
710.12(A)(2)(offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(2)(offenses committed on and after 1/1/04)
710.16(offenses committed before 1/1/04)	OJI-CR 710.16(offenses committed before 1/1/04)
710.16 (offenses committed before 1/1/04)	OJI-CR 710.16 (offenses committed before 1/1/04)
710.21 (offenses committed before 1/1/04)	OJI-CR 710.21 (offenses committed before 1/1/04)

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
710.21(offenses committed on and after 1/1/04)	OJI-CR 710.21(offenses committed on and after 1/1/04)
711.19 (offenses committed before 1/1/04)	OJI-CR 711.19 (offenses committed before 1/1/04)
711.19 (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19 (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(offenses committed on and after 6/1/04)	OJI-CR 711.19(offenses committed on and after 6/1/04)
711.19(A) (offenses committed before 6/30/03)	OJI-CR 711.19(A) (offenses committed before 6/30/03)
711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)
711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)
711.19(A)(offenses committed on and after 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/1/04)
711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)	711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)
711.19(A)(2) (offenses committed on and after 9/23/04)	OJI-CR 711.19(A)(2) (offenses committed on and after 9/23/04)
711.19(B) (offenses committed before 6/30/03)	OJI-CR 711.19(B) (offenses committed before 6/30/03)
711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)
711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(B)(offenses committed on and after 6/1/04)	OJI-CR 711.19(B)(offenses committed on and after 6/1/04)
711.194	OJI-CR 711.194
711.203 (offenses committed before 1/1/04)	OJI-CR 711.203 (offenses committed before 1/1/04)
711.203 (offenses committed on and after 1/1/04)	OJI-CR 711.203 (offenses committed on and after 1/1/04)





## Chapter CR 517

# OFFENSES AGAINST THE PUBLIC PEACE

- CR 517.01 Inciting to violence *[Rev. 9-13-03]*
- CR 517.02(A) Aggravated riot *[Rev. 5-31-02]*
- CR 517.02(B) Aggravated riot *[Rev. 5-31-02]*
- CR 517.03 Riot *[Rev. 5-31-02]*
- CR 517.11(A) Disorderly conduct R.C. 2917.11(A) (offenses committed on and after 1/25/02 but before 3/23/19) *[Rev. 9/14/19]*
- CR 517.11(A) Disorderly conduct R.C. 2917.11(A) (offenses committed on and after 3/23/19) *[Rev. 9/14/19]*
- CR 517.11(B) Disorderly conduct R.C. 2917.11(B) (offenses committed on and after 1/25/02 but before 3/23/19) *[Rev. 9/14/19]*
- CR 517.11(B) Disorderly conduct R.C. 2917.11(B) (offenses committed on and after 3/23/19) *[Rev. 9/14/19]*
- CR 517.12 Disturbing a lawful meeting *[Rev. 5-31-02]*
- CR 517.13 Misconduct at an emergency *[Rev. 5-31-02]*
- CR 517.21(A) Telecommunications harassment R.C. 2917.21(A) (offenses committed before 8/16/16) *[Rev. 1/7/17]*
- CR 517.21(A) Telecommunications harassment R.C. 2917.21(A) (offenses committed on and after 8/16/16) *[Rev. 1/7/17]*
- CR 517.21(B) Telecommunications harassment R.C. 2917.21(B) (offenses committed before 8/16/16) *[Rev. 1/7/17]*
- CR 517.21(B) Telecommunications harassment R.C. 2917.21(B) (offenses committed on and after 8/16/16) *[Rev. 1/7/17]*
- CR 517.211 Nonconsensual dissemination of private sexual images R.C. 2917.211 (offenses committed on and after 3/22/19) *[Rev. 12/4/21]*
- CR 517.31 Inducing panic *[Rev. 9/14/13]*
- CR 517.32 Making false alarms *[Rev. 9/14/13]*
- CR 517.33 Unlawful possession or use of a hoax weapon of mass destruction R.C. 2917.33 *[Rev. 12-11-10]*
- CR 517.40 Crowd safety *[Rev. 5-31-02]*
- CR 517.41 Misconduct involving a public transportation system *[Rev. 5-31-02]*
- CR 517.47 Improperly handling infectious agents *[Rev. 5-31-02]*
- CR 517.01 Inciting to violence R.C. 2917.01 *[Rev. 9-13-03]*

1. The defendant is charged with inciting to violence. Before you can find the defendant



guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant knowingly engaged in conduct designed to (urge) (incite) another to commit an offense of violence and the conduct

(*Use appropriate alternative[s]*)

(A)(1) took place under circumstances which created a clear and present danger that (*insert name of offense of violence*) would be committed.

(*or*)

(A)(2) proximately resulted in the commission of (*insert name of offense of violence*).

#### COMMENT

The court must instruct the jury on the elements of the applicable offense of violence as charged in the indictment, together with the meaning of pertinent words and phrases.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22.

3. PROXIMATE RESULT. OJI-CR 417.23.

#### COMMENT

“Proximate result” as used in this statute has the same meaning as “proximate cause.”

4. OFFENSE OF VIOLENCE. R.C. 2901.01.

#### COMMENT

The court must instruct the jury on the elements of the applicable offense of violence as charged in the indictment, together with the meaning of pertinent words and phrases.

5. CONSTITUTIONALLY PROTECTED CONDUCT: EXCEPTION.

#### COMMENT

*State v. Lessin* (1993), 67 Ohio St.3d 487, holds, in a freedom of expression case: “When a criminal offense charged arises from conduct that encompasses both a constitutionally protected act and an act that is not constitutionally protected, failure of the trial court to instruct the jury that it may not consider evidence of the

constitutionally protected act as proof of the defendant's guilt is reversible error."

## 6. ADDITIONAL FINDING:

### COMMENT

The Committee believes that by determining the exact offense of violence that was alleged, the jury has thereby made a finding as to whether that offense of violence is a felony or misdemeanor and therefore no additional finding is necessary. *State v. Elkins*, Franklin App. No. 01AP-1069, 2002-Ohio-2914.

## 7. CONCLUSION. OJI-CR 425.01.

## 8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

### CR 517.02(A) Aggravated riot R.C. 2917.02(A) [Rev. 5-31-02]

1. The defendant is charged with aggravated riot. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant participated with four or more other persons in a course of disorderly conduct

*(Use appropriate alternative[s])*

(A)(1) with purpose to (commit) (facilitate [aid] the commission of) (insert name of offense of felony).

*(or)*

(A)(2) with purpose to (commit) (facilitate [aid] the commission of) (insert name of offense of violence).

*(or)*

(A)(3) ([when the defendant recklessly] [when the defendant had knowledge that a participant]) ([had on or about his/her person] [had under his/her control] [used] [intended to use]) a (deadly weapon) (dangerous ordnance).

## 2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

### COMMENT

The culpable mental state of "purposely" applies only to (A)(1) and (A)(2).



## 3. FELONY. R.C. 2901.02.

**COMMENT**

The court must instruct the jury on the elements of the applicable felony offense as charged in the indictment, together with the meaning of pertinent words and phrases.

## 4. OFFENSE OF VIOLENCE. R.C. 2901.01.

**COMMENT**

The court must instruct the jury on the elements of the applicable offense of violence as charged in the indictment, together with the meaning of pertinent words and phrases.

## 5. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that the culpable mental state of recklessness applies to the defendant's possession, control, or use of a deadly weapon or dangerous ordnance under R.C. 2917.02(A)(3).

R.C. 2919.21(B) is not a strict liability offense. *State v. Collins* (2000), 89 Ohio St.3d 524, 733 N.E.2d 1118.

6. **KNOWLEDGE.** A person has knowledge of circumstances when he/she is aware that such circumstances probably exist. Since you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed, at the time, in the mind of the defendant, awareness of the probability that a participant (had on or about his/her person) (had under his/her control) (used) (intended to use) a (deadly weapon) (dangerous ordnance).

**COMMENT**

Drawn from OJI-CR 417.11 § 1 and 3; R.C. 2901.22.

## 7. DISORDERLY CONDUCT. OJI-CR 517.11(A); R.C. 2917.11.

**COMMENT**

The court must instruct the jury on the elements of the offense of disorderly conduct as charged in the indictment, together with the meaning of pertinent words and phrases.

8. DEADLY WEAPON. “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11.

9. DANGEROUS ORDNANCE. R.C. 2923.11(K) and (L).

10. ADDITIONAL FINDING:

INMATE AT A DETENTION FACILITY. R.C. 2917.02(B).

**COMMENT**

A violation of R.C. 2917.03 by an inmate at a detention facility constitutes aggravated riot pursuant to R.C. 2917.02(B)(2). *See* OJI-CR 517.03 for instructions regarding the offense of aggravated riot by an inmate at a detention facility.

DETENTION FACILITY. “Detention facility” means any place used for the confinement of a person charged with or convicted of any crime or alleged or found to be a delinquent child or unruly child.

**COMMENT**

R.C. 2921.01.

11. CONCLUSION. OJI-CR 425.01.



12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.02(B) Aggravated riot R.C. 2917.02(B) [Rev. 5-31-02]**

**COMMENT**

An inmate of a detention facility (R.C. 2921.01) who violates R.C. 2917.02(A) or R.C. 2917.03 commits a felony of the third degree and sentence is served consecutively.

1. The defendant is charged with aggravated riot. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was an inmate in a detention facility and participated with four or more other persons

*(Use appropriate alternative)*

(A)(1) in a course of disorderly conduct with purpose to (commit) (facilitate the commission of) a felony.

*(or)*

(A)(2) in a course of disorderly conduct with purpose to (commit) (facilitate the commission of) an offense of violence.

*(or)*

(A)(3) in a course of disorderly conduct ([when the defendant] [when the defendant had knowledge that a participant]) ([had on or about his/her person] [had under his/her control] [used] [intended to use]) a (deadly weapon) (dangerous ordnance).

**COMMENT**

The Committee believes that R.C. 2917.02(A)(3) requires that the offender have actual knowledge.

*(or)*

(B) in a course of disorderly conduct with purpose to (commit) (facilitate the commission of) another misdemeanor.

*(or)*

(C) in a course of disorderly conduct with purpose to intimidate a public (official) (employee) into (taking) (refraining from) official action.

*(or)*

(D) in a course of disorderly conduct with purpose to (hinder) (impede) (obstruct) a function of government.

(or)

(E) in a course of disorderly conduct with purpose to (hinder) (impede) (obstruct) the orderly process of (administration) (instruction) at an educational institution.

(or)

(F) in a course of disorderly conduct with purpose to (interfere with) (disrupt) lawful activities carried on at an educational institution.

(or)

(G) (with purpose) (purposely) to do an act with unlawful (force) (violence), even though such act might otherwise be lawful.

2. DETENTION FACILITY. R.C. 2921.01(F).

3. DISORDERLY CONDUCT. OJI-CR 517.11(B); R.C. 2917.11.

#### COMMENT

The court must give complete instructions describing the elements of disorderly conduct with necessary definitions and explanations.

4. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

5. FELONY.

#### COMMENT

The Committee believes that the determination of whether an offense constitutes a felony is one of law to be made by the court. *See* R.C. 2901.02(D) and (E). The court must give complete instructions describing the elements of the alleged felony with necessary definitions and explanations.

6. OFFENSE OF VIOLENCE. R.C. 2901.01.

#### COMMENT

The Committee believes that the determination of whether an offense constitutes a felony is one of law to be made by the court. *See* R.C. 2901.01(A)(9). The court must give complete instructions describing the elements of the offense of violence with necessary definitions and explanations.

7. KNOWLEDGE. A person has knowledge of circumstances when he/she is aware



that such circumstances probably exist. Since you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed, at the time, in the mind of the defendant, awareness of the probability that a participant (had on or about his/her person) (had under his/her control) (used) (intended to use) a (deadly weapon) (dangerous ordnance).

**COMMENT**

Drawn from OJI-CR 417.11 § 1 and 3; R.C. 2901.22(B).

8. **DEADLY WEAPON.** “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11(A).

9. **DANGEROUS ORDNANCE.** R.C. 2923.11(K) and (L).

10. **MISDEMEANOR.**

**COMMENT**

The Committee believes that the determination of whether an offense constitutes a misdemeanor is one of law to be made by the court. *See* R.C. 2901.02(D) and (F). The court must give complete instructions describing the elements of the misdemeanor with necessary definitions and explanations.

11. **PUBLIC OFFICIAL.** “Public official” means any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

**COMMENT**

R.C. 2921.01(A).

12. **CONCLUSION.** OJI-CR 425.01.

13. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.03 Riot R.C. 2917.03 [Rev. 5-31-02]**

**COMMENT**

A violation of R.C. 2917.03 by an inmate at a detention facility constitutes aggravated riot pursuant to R.C. 2917.02(B)(2).

1. The defendant is charged with (riot) (aggravated riot). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant participated with four or more persons

*(Use appropriate alternative[s])*

(A)(1) in a course of disorderly conduct with purpose to (commit) (facilitate the commission of) the offense of *(insert name of other misdemeanor)*.

**COMMENT**

The court must instruct the jury on the elements of the misdemeanor offense as charged in the indictment, together with the meaning of pertinent words and phrases.

*(or)*

(A)(2)(a) in a course of disorderly conduct with purpose to intimidate a public (official) (employee) into (taking) (refraining from) official action.

*(or)*

(A)(2)(b) in a course of disorderly conduct with purpose to (hinder) (impede) (obstruct) a function of government.

*(or)*

(A)(3)(a) in a course of disorderly conduct with purpose to (hinder) (impede) (obstruct) the orderly process of (administration) (instruction) at an educational institution.

*(or)*

(A)(3)(b) in a course of disorderly conduct with purpose to (interfere with) (disrupt) lawful activities carried on at an educational institution.

*(or)*

(B) (with purpose) (purposely) to do an act with unlawful (force) (violence), even



though such act might otherwise be lawful.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
3. DISORDERLY CONDUCT. OJI-CR 517.11; R.C. 2917.11.

**COMMENT**

The court must instruct the jury on the elements of the offense of disorderly conduct as charged in the indictment, together with the meaning of pertinent words and phrases.

4. PUBLIC OFFICIAL. R.C. 2921.01(A).
5. MISDEMEANOR. R.C. 2901.02.
6. ADDITIONAL FINDING:  
INMATE AT A DETENTION FACILITY. R.C. 2917.02(B).

**COMMENT**

A violation of R.C. 2917.03 by an inmate at a detention facility constitutes aggravated riot pursuant to R.C. 2917.02(B)(2).

DETENTION FACILITY. "Detention facility" means any place used for the confinement of a person charged with or convicted of any crime or alleged or found to be a delinquent child or unruly child.

**COMMENT**

R.C. 2921.01.

7. CONCLUSION. OJI-CR 425.01.
8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.11(A) Disorderly conduct R.C. 2917.11(A) (offenses committed on and after 1/25/02 but before 3/23/19) [Rev. 9/14/19]**

1. The defendant is charged with disorderly conduct. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant recklessly caused (inconvenience) (annoyance) (alarm) to another by

(Use appropriate alternative[s])

(A)(1) engaging in (fighting) (threatening harm to [persons] [property]) ([violent] [turbulent] behavior).

(or)

(A)(2) (making unreasonable noise) (making an offensively coarse [utterance] [gesture] [display]) (communicating unwarranted and grossly abusive language to another person), when the words spoken are likely, by their very utterance, to inflict injury or to provoke the average person to an immediate retaliatory breach of the peace.

#### COMMENT

A person may not be punished under R.C. 2917.11(A)(2) for “recklessly causing inconvenience, annoyance, or alarm to another,” by making an “offensively coarse utterance” or communicating unwarranted and grossly abusive language to any person,” unless the words spoken are likely, by their very utterance, to inflict injury or provoke the average person to an immediate retaliatory breach of the peace. *State v. Hoffman* (1979) 57 Ohio St.2d 129.

*State v. Lessin* (1993), 67 Ohio St.3d 487, holds, in a freedom of expression case: “When a criminal offense charged arises from conduct that encompasses both a constitutionally protected act and an act that is not constitutionally protected, failure of the trial court to instruct the jury that it may not consider evidence of the constitutionally protected act as proof of the defendant’s guilt is reversible error.”

(or)

(A)(3) (insulting) (taunting) (challenging) another, under circumstances in which such conduct was likely to provoke a violent response.

(or)

(A)(4) (hindering) (preventing) the movement of persons (on a [public street] [road] [highway] [right-of-way]) ([to] [from] [within] [upon] public or private property), so as to have interfered with the rights of others by an act which served no lawful and reasonable purpose of the defendant.

(or)

(A)(5) creating a condition which (was physically offensive to persons) (presented a risk of physical harm to persons or property) by an act which served no lawful and reasonable purpose of the defendant.

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

3. RISK. “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.



**COMMENT**

R.C. 2901.01.

4. **PHYSICAL HARM TO PERSONS.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

5. **PHYSICAL HARM TO PROPERTY.** R.C. 2901.01.

6. **STREET OR HIGHWAY.** “Street” or “highway” means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

**COMMENT**

R.C. 4511.01.

7. **RIGHT-OF-WAY.** R.C. 4511.01.

8. **ADDITIONAL FINDING:**

**AFTER A WARNING TO DESIST.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant persisted in the disorderly conduct after a reasonable (warning) (request) to desist. If your verdict is not guilty, you will not consider this issue.

**VICINITY OF SCHOOL/SAFETY ZONE.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in (the vicinity of a school) (a school safety zone). If your verdict is not guilty, you will not consider this issue.

**IN THE VICINITY OF A SCHOOL.** R.C. 2925.01.

**SCHOOL SAFETY ZONE.** R.C. 2901.01.

**IN THE PRESENCE OF EMERGENCY PERSONNEL.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any (law enforcement officer) (firefighter) (rescuer) (medical person) (emergency medical services person) (*describe other authorized person*) who is engaged in his/her duties at the scene of a (fire) (accident) (disaster) (riot) (emergency of any kind). If your verdict is not guilty, you will not consider this issue.

LAW ENFORCEMENT OFFICER. R.C. 2901.01.

EMERGENCY MEDICAL SERVICES PERSON. R.C. 2133.21.

EMERGENCY FACILITY. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility. If your verdict is not guilty, you will not consider this issue.

EMERGENCY FACILITY PERSON. R.C. 2909.04.

EMERGENCY FACILITY. R.C. 2909.04.

9. CONCLUSION. OJI-CR 425.01.

10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.11(A) Disorderly conduct R.C. 2917.11(A) (offenses committed on and after 3/23/19) [Rev. 9/14/19]**

1. The defendant is charged with disorderly conduct. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant recklessly caused (inconvenience) (annoyance) (alarm) to another by

*(Use appropriate alternative[s])*

(A)(1) engaging in (fighting) (threatening harm to [persons] [property]) ([violent] [turbulent] behavior);

*(or)*

(A)(2) (making unreasonable noise) (making an offensively coarse [utterance] [gesture] [display]) (communicating unwarranted and grossly abusive language to another person), when the words spoken are likely, by their very utterance, to inflict injury or to provoke the average person to an immediate retaliatory breach of the peace;

**COMMENT**

A person may not be punished under R.C. 2917.11(A)(2) for "recklessly causing inconvenience, annoyance, or alarm to another," by making an "offensively coarse utterance," or "communicating unwarranted and grossly abusive language to any person," unless the words spoken are likely, by their very utterance, to inflict injury or provoke the average person to an immediate retaliatory breach of the peace. *State v. Hoffman*, 57 Ohio St.2d 129 (1979).

*State v. Lessin*, 67 Ohio St.3d 487 (1993), holds, in a freedom of expression case: "When a criminal offense charged arises from conduct that encompasses both a constitutionally protected act and an act that is not constitutionally protected, failure of the trial court to instruct the jury that it may not consider evidence of the



constitutionally protected act as proof of the defendant's guilt is reversible error."

(or)

(A)(3) (insulting) (taunting) (challenging) another, under circumstances in which such conduct was likely to provoke a violent response;

(or)

(A)(4) (hindering) (preventing) the movement of persons (on a [public street] [road] [highway] [right-of-way]) ([to] [from] [within] [upon] public or private property), so as to have interfered with the rights of others by an act which served no lawful and reasonable purpose of the defendant;

(or)

(A)(5) creating a condition which (was physically offensive to persons) (presented a risk of physical harm to persons or property) by an act which served no lawful and reasonable purpose of the defendant.

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

3. RISK. "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01.

4. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

5. PHYSICAL HARM TO PROPERTY. R.C. 2901.01.

6. STREET OR HIGHWAY. "Street" or "highway" means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

**COMMENT**

R.C. 4511.01.

7. RIGHT-OF-WAY. R.C. 4511.01.

## 8. ADDITIONAL FINDING:

## (A) AFTER A WARNING TO DESIST. R.C. 2917.11(E)(3)(a).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant persisted in the disorderly conduct after a reasonable (warning) (request) to desist. If your verdict is not guilty, you will not consider this issue.

## (B) VICINITY OF SCHOOL/SAFETY ZONE. R.C. 2917.11(E)(3)(b).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in (the vicinity of a school) (a school safety zone). If your verdict is not guilty, you will not consider this issue.

## (C) IN THE PRESENCE OF EMERGENCY PERSONNEL. R.C. 2917.11(E)(3)(c).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any (law enforcement officer) (firefighter) (rescuer) (medical person) (emergency medical services person) (*describe other authorized person*) who was engaged in his/her duties at the scene of a (fire) (accident) (disaster) (riot) (emergency of any kind). If your verdict is not guilty, you will not consider this issue.

## (D) EMERGENCY FACILITY. R.C. 2917.11(E)(3)(d).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any emergency facility person who was engaged in the person's duties in an emergency facility. If your verdict is not guilty, you will not consider this issue.

## (E) PRIOR CONVICTION. OJI-CR 425.15.

## (F) DEFINITIONS.

(1) IN THE VICINITY OF A SCHOOL. R.C. 2925.01.

(2) SCHOOL SAFETY ZONE. R.C. 2901.01.

(3) LAW ENFORCEMENT OFFICER. R.C. 2901.01.

(4) EMERGENCY MEDICAL SERVICES PERSON. R.C. 2133.21.

(5) EMERGENCY FACILITY PERSON. R.C. 2909.04.

(6) EMERGENCY FACILITY. R.C. 2909.04.

## 9. CONCLUSION. OJI-CR 425.01.

## 10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.11(B) Disorderly conduct R.C. 2917.11(B) (offenses committed on and after 1/25/02 but before 3/23/19) [Rev. 9/14/19]**

1. The defendant is charged with disorderly conduct. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day



of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant, while voluntarily intoxicated

(Use appropriate alternative[s])

(B)(1) in (a public place) (the presence of two or more persons) engaged in conduct likely to (be offensive) (cause [inconvenience] [annoyance] [alarm]) to persons of ordinary sensibilities, which conduct the defendant, if he/she were not intoxicated, should have known was likely to have such an effect on others.

(or)

(B)(2) (engaged in conduct) (created a condition) which presented a risk of physical harm to (himself/herself) (another) (the property of another).

**COMMENT**

A violation of any statute or ordinance of which an element is operating a motor vehicle or watercraft, while under the influence of alcohol or any drug of abuse, is not a violation of R.C. 2917.11(B). R.C. 2917.11(C).

2. **RISK.** “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01.

3. **PHYSICAL HARM TO PERSONS.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

4. **PHYSICAL HARM TO PROPERTY.** R.C. 2901.01.

5. **ADDITIONAL FINDING:**

**AFTER A WARNING TO DESIST.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant persisted in the disorderly conduct after a reasonable (warning) (request) to desist. If your verdict is not guilty, you will not consider this issue.

**VICINITY OF SCHOOL/SAFETY ZONE.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in (the vicinity of a school) (a school safety zone). If your verdict

is not guilty, you will not consider this issue.

IN THE VICINITY OF A SCHOOL. R.C. 2925.01.

SCHOOL SAFETY ZONE. R.C. 2901.01.

IN THE PRESENCE OF EMERGENCY PERSONNEL. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any (law enforcement officer) (firefighter) (rescuer) (medical person) (emergency medical services person) (*describe other authorized person*) who is engaged in his/her duties at the scene of a (fire) (accident) (disaster) (riot) (emergency of any kind). If your verdict is not guilty, you will not consider this issue.

LAW ENFORCEMENT OFFICER. R.C. 2901.01.

EMERGENCY MEDICAL SERVICES PERSON. R.C. 2133.21.

EMERGENCY FACILITY. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility. If your verdict is not guilty, you will not consider this issue.

EMERGENCY FACILITY PERSON. R.C. 2909.04.

EMERGENCY FACILITY. R.C. 2909.04.

6. CONCLUSION. OJI-CR 425.01.

7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.11(B) Disorderly conduct R.C. 2917.11(B) (offenses committed on and after 3/23/19) [Rev. 9/14/19]**

1. The defendant is charged with disorderly conduct. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, while voluntarily intoxicated

*(Use appropriate alternative[s])*

(B)(1) in (a public place) (the presence of two or more persons) engaged in conduct likely to (be offensive) (cause [inconvenience] [annoyance] [alarm]) to persons of ordinary sensibilities, which conduct the defendant, if he/she were not intoxicated, should have known was likely to have such an effect on others;

*(or)*

(B)(2) (engaged in conduct) (created a condition) that presented a risk of physical harm to (himself/herself) (another) (the property of another).

#### COMMENT

A violation of any statute or ordinance of which an element is operating a motor



vehicle or watercraft, while under the influence of alcohol or any drug of abuse, is not a violation of R.C. 2917.11(B). R.C. 2917.11(C).

2. **RISK.** “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01.

3. **PHYSICAL HARM TO PERSONS.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

4. **PHYSICAL HARM TO PROPERTY.** R.C. 2901.01.

5. **ADDITIONAL FINDING:**

(A) **AFTER A WARNING TO DESIST.** R.C. 2917.11(E)(3)(a).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant persisted in the disorderly conduct after a reasonable (warning) (request) to desist. If your verdict is not guilty, you will not consider this issue.

(B) **VICINITY OF SCHOOL/SAFETY ZONE.** R.C. 2917.11(E)(3)(b).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in (the vicinity of a school) (a school safety zone). If your verdict is not guilty, you will not consider this issue.

(C) **IN THE PRESENCE OF EMERGENCY PERSONNEL.** R.C. 2917.11(E)(3)(c).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any (law enforcement officer) (firefighter) (rescuer) (medical person) (emergency medical services person) (describe other authorized person) who was engaged in his/her duties at the scene of a (fire) (accident) (disaster) (riot) (emergency of any kind). If your verdict is not guilty, you will not consider this issue.

(D) **EMERGENCY FACILITY.** R.C. 2917.11(E)(3)(d).

If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the offense was committed in the presence of any emergency facility person who was engaged in the person’s duties in an emergency facility. If your verdict is not guilty, you will not consider this issue.

(E) PRIOR CONVICTION. OJI-CR 425.15.

(F) DEFINITIONS.

(1) IN THE VICINITY OF A SCHOOL. R.C. 2925.01.

(2) SCHOOL SAFETY ZONE. R.C. 2901.01.

(3) LAW ENFORCEMENT OFFICER. R.C. 2901.01.

(4) EMERGENCY MEDICAL SERVICES PERSON. R.C. 2133.21.

(5) EMERGENCY FACILITY PERSON. R.C. 2909.04.

(6) EMERGENCY FACILITY. R.C. 2909.04.

6. CONCLUSION. OJI-CR 425.01.

7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.12 Disturbing a lawful meeting R.C. 2917.12 [Rev. 5-31-02]**

1. The defendant is charged with disturbing a lawful meeting. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant, with purpose to (prevent) (disrupt) a lawful (meeting) (procession) (gathering)

*(Use appropriate alternative[s])*

(A)(1) did an act which (obstructed) (interfered) with the due conduct of such (meeting) (procession) (gathering).

*(or)*

(A)(2) made (an utterance) (a gesture) (a display) which outraged the sensibilities of the group.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

3. CONCLUSION. OJI-CR 425.01.

4. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.13 Misconduct at an emergency R.C. 2917.13 [Rev. 5-31-02]**

1. The defendant is charged with misconduct at an emergency. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly

*(Use appropriate alternative[s])*

(A)(1) hampered the lawful operations of a (law enforcement officer) (firefighter) (rescuer) (medical person) (emergency medical services person) (describe other



*authorized person*) engaged in his duties at the scene of a (fire) (accident) (disaster) (riot) (*describe other emergency*).

(or)

(A)(2) hamper the lawful activities of an emergency facility person engaged in the person's duties in an emergency facility.

(or)

(A)(3) failed to obey the lawful order of a law enforcement officer engaged in his/her duties (at the scene of) (in connection with) a (fire) (accident) (disaster) (riot) (*describe other emergency*).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. LAW ENFORCEMENT OFFICER. R.C. 2901.01.
4. EMERGENCY MEDICAL SERVICES PERSON. R.C. 2133.21.
5. EMERGENCY FACILITY PERSON. R.C. 2909.04.
6. EMERGENCY FACILITY. R.C. 2909.04.
7. ADDITIONAL FINDING:

RISK OF PHYSICAL HARM TO PERSONS. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant created a risk of physical harm to persons. If your verdict is not guilty, you will not consider this issue.

PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

COMMENT
R.C. 2901.01.

RISK OF PHYSICAL HARM TO PROPERTY. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant created a risk of physical harm to property. If your verdict is not guilty, you will not consider this issue.

PHYSICAL HARM TO PROPERTY. R.C. 2901.01.

8. CONCLUSION. OJI-CR 425.01.
9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.21(A) Telecommunications harassment R.C. 2917.21(A) (offenses committed before 8/16/16) [Rev. 1/7/17]**

1. The defendant is charged with telecommunications harassment. Before you can find

the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in (County) (*other jurisdiction*), Ohio, the defendant knowingly (made a telecommunication) (caused a telecommunication to be made) (permitted a telecommunication to be made from a device under his/her/its control) to another, and the caller

(Use appropriate alternative[s])

(A)(1) failed to identify himself/herself/itself to the recipient of the telecommunication and made the telecommunication with the purpose to (harass) (abuse) any person at the premises to which the telecommunication was made, regardless of whether actual communication took place during the telecommunication;

(or)

(A)(2) (described) (suggested) (requested) (proposed) that the (caller) (recipient of the telecommunication) (any other person) engage in sexual activity, and (the recipient of the telecommunication) (another person at the premises to which the telecommunication was made) had requested in (a previous) ([the immediate] [that]) telecommunication that the caller not make a telecommunication to the (recipient) (premises to which the telecommunication was made);

(or)

(A)(3) committed the offense of aggravated menacing during the telecommunication;

(or)

(A)(4) knowingly stated to the recipient of the telecommunication that the caller intended to cause damage to or destroy property, and the (recipient) (*describe member of the family of the recipient*) (*describe other person residing at the premises to which the telecommunication was made*), who (owned) (leased) (resided in) (worked in) the property, was at the time of destruction or damaging going to be (near) (in) the property, and had the responsibility of (protecting) (insuring) the property that would be damaged or destroyed;

(or)

(A)(5) knowingly made a telecommunication to (the recipient of the telecommunication) (*describe person at the premises to which the telecommunication was made*) (the premises) and the caller had been previously told by (the recipient) (*describe other person at the premises*) not to make telecommunication to (the premises) (any person at the premises).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
4. TELECOMMUNICATION. R.C. 2917.21(E)(3), R.C. 2913.01.
5. TELECOMMUNICATION DEVICE. R.C. 2917.21(E)(3), R.C. 2913.01.
6. CALLER. R.C. 2917.21(E)(2).



7. **SEXUAL ACTIVITY.** “Sexual activity” means sexual conduct or sexual contact, or both.

**COMMENT**

R.C. 2907.01.

8. **SEXUAL CONDUCT.** R.C. 2907.01.

9. **SEXUAL CONTACT.** “Sexual contact” means any touching of an erogenous zone of another including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

**COMMENT**

R.C. 2907.01.

10. **AGGRAVATED MENACING.** OJI-CR 503.21; R.C. 2903.21.

**COMMENT**

When instructing on a violation of R.C. 2917.21(A)(3), the court must give complete instructions identifying the crime of aggravated menacing and describing every element thereof with the necessary definitions and explanations.

11. **PROPERTY.** R.C. 2901.01.

12. **ADDITIONAL FINDINGS:**

(A) **PRIOR CONVICTION OF SAME OFFENSE.** OJI-CR 425.15; R.C. 2917.21(C)(2), R.C. 2917.21(C)(3).

(B) **ECONOMIC HARM.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the telecommunication resulted in economic harm and the amount of the economic harm. If your verdict is not guilty, you will not decide these issues.

**COMMENT**

This additional finding applies only to R.C. 2917.21(A)(4).

It is not necessary for the jury to return an exact value. It is sufficient if the finding is expressed as a monetary range required to determine the degree of offense. R.C. 2913.61.

## (C) DEFINITION:

(1) ECONOMIC HARM. R.C. 2917.21(E)(1).

13. CONCLUSION. OJI-CR 425.01.

14. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

15. VERDICT FORM—ECONOMIC HARM. We, the jury, having found the defendant guilty of telecommunications harassment, further find beyond a reasonable doubt that the amount of the economic harm was \* \_\_\_\_\_.

\* Insert in ink one of the following categories:

*(Use appropriate alternative)*

(A) (offenses committed before 9/30/11)

*(Use appropriate alternative[s])***COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

(1) "less than \$500";

*(or)*

(2) "\$500 or more but less than \$5,000";

*(or)*

(3) "\$5,000 or more but less than \$100,000";

*(or)*

(4) "\$100,000 dollars or more."

*(or)*

(B) (offenses committed on and after 9/30/11)

*(Use appropriate alternative[s])***COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

*(Use appropriate alternative[s])*

(1) "less than \$1,000";



(or)

(2) “\$1,000 or more but less than \$7,500”;

(or)

(3) “\$7,500 or more but less than \$150,000”;

(or)

(4) “\$150,000 or more.”

**CR 517.21(A) Telecommunications harassment R.C. 2917.21(A) (offenses committed on and after 8/16/16) [Rev. 1/7/17]**

1. The defendant is charged with telecommunications harassment. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in (County) (*other jurisdiction*), Ohio, the defendant knowingly (made a telecommunication) (caused a telecommunication to be made) (permitted a telecommunication to be made from a device under his/her/its control) to another, and the caller

*(Use appropriate alternative[s])*

(A)(1) made the telecommunication with the purpose to (harass) (intimidate) (abuse) any person at the premises to which the telecommunication was made, regardless of whether actual communication took place during the telecommunication;

(or)

(A)(2) (described) (suggested) (requested) (proposed) that (the caller) (the recipient of the telecommunication) (any other person) engage in sexual activity, and (the recipient of the telecommunication) (another person at the premises to which the telecommunication was made) had requested in (a previous) ([the immediate] [that]) telecommunication that the caller not make a telecommunication to the (recipient) (premises to which the telecommunication was made);

(or)

(A)(3) committed the offense of aggravated menacing during the telecommunication;

(or)

(A)(4) knowingly stated to the recipient of the telecommunication that the caller intended to cause damage to or destroy property, and the (recipient) (*describe member of the family of the recipient*) (*describe other person residing at the premises to which the telecommunication was made*), who (owned) (leased) (resided in) (worked in) the property, was at the time of destruction or damaging going to be (near) (in) the property, and had the responsibility of (protecting) (insuring) the property that would be damaged or destroyed;

(or)

(A)(5) knowingly made a telecommunication to (the recipient of the telecommunication)

(describe person at the premises to which the telecommunication was made) (the premises) and the caller had been previously told by (the recipient) (describe other person at the premises) not to make telecommunication to (the premises) (any person at the premises);

(or)

(A)(6) knowingly made any (comment) (request) (suggestion) (proposal) to the recipient of the telecommunication that was (threatening) (intimidating) (menacing) (coercive) (obscene) with the intent to (abuse) (threaten) (harass) the recipient;

(or)

(A)(7) knowingly interrupted the telecommunication service of any person;

(or)

(A)(8) knowingly transmitted to (insert name of person), regardless of whether the telecommunication is heard in its entirety, any (file) (document) (describe other communication) that prevented him/her from using his/her (telephone service) (electronic communication device);

(or)

(A)(9) knowingly made any false statement concerning the (death) (injury) (illness) (disfigurement) (reputation) (indecent conduct) (criminal conduct) of the (recipient of the telecommunication) (family or household member of the recipient) for the purpose of (abusing) (threatening) (intimidating) (harassing) the recipient;

(or)

(A)(10) knowingly incited another person through a (telecommunication) (describe other means) to (harass) (participate in the harassment) of (insert name of victim);

(or)

(A)(11) knowingly alarmed the recipient by making a telecommunication at an hour or hours known to be inconvenient to the recipient and in (an offensive) (a repetitive manner).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
4. TELECOMMUNICATION. R.C. 2917.21(E)(3), R.C. 2913.01.
5. TELECOMMUNICATION DEVICE. R.C. 2917.21(E)(3), R.C. 2913.01.
6. CALLER. "Caller" means a person who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.

#### COMMENT

Drawn from R.C. 2917.21(E)(2).



7. SEXUAL ACTIVITY. OJI-CR 417.39 § 1.
8. SEXUAL CONDUCT. OJI-CR 417.39 § 2.
9. SEXUAL CONTACT. OJI-CR 417.39 § 3.
10. AGGRAVATED MENACING. OJI-CR 503.21; R.C. 2903.21.

**COMMENT**

When instructing on a violation of R.C. 2917.21(A)(3), the court must give complete instructions identifying the crime of aggravated menacing and describing every element thereof with the necessary definitions and explanations.

11. PROPERTY. R.C. 2901.01.
12. THREAT. “Threat” means (a statement) (conduct) (*describe other means of communication*), whether direct or indirect, exerting pressure sufficient to (overcome the will of another) (make another fearful or apprehensive of injury or harm).

**COMMENT**

Drawn from *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501. The terms “harass” and “abuse” are not defined by statute. “The fact that the statute does not place legal definitions on each of these terms demonstrates that the General Assembly intended to prohibit conduct that is easily definable by the common everyday meaning of these words. A person of ordinary intelligence would know what type of conduct is prohibited.” *State v. Kronenberg*, 8th Dist. Cuyahoga, No. 101403, 2015-Ohio-1020, quoting *State v. Dennis*, 3d Dist. Allen No. 1-97-42 (Oct. 30, 1997).

13. INTIMIDATE. “Intimidate” means to frighten, scare, or bully.

**COMMENT**

Drawn from, *State v. Roulette*, 4th Dist. Scioto No.10CA 3364, 2011-Ohio-6993.

14. COERCE. “Coerce” means to compel by force, pressure, threat, or other means.
15. OBSCENE. OJI-CR 507.31 §§ 7, 8; R.C. 2907.01.
16. INDECENT CONDUCT. “Indecent conduct” includes exposing a person’s private parts, engaging in sexual conduct or masturbation, or engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

**COMMENT**

Drawn from R.C. 2907.09.

17. CRIMINAL CONDUCT. R.C. 2923.41(C).

18. FAMILY OR HOUSEHOLD MEMBER. R.C. 2917.21.

19. PERSON LIVING AS A SPOUSE. "Person living as a spouse" means a person who ([is living] [has lived]) (is cohabitating in a common law marital relationship) (has cohabitated within five years prior to the date of the alleged commission of the act in question) with the recipient of the telecommunication.

**COMMENT**

Drawn from R.C. 2917.21(G)(6).

20. AFFIRMATIVE DEFENSES:

(A) GENERAL. OJI-CR 417.27.

(B) PROVIDING ACCESS.

**COMMENT**

R.C. 2917.21(E)(1) creates an exception to the prohibition of R.C. 2917.21(A). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is



always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2nd Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

(Use appropriate alternative[s])

(1) The defendant claims that all he/she did was provide (access or connection) (capabilities that were incidental to providing access or connection) to/from an electronic method of remotely transferring information that was not under his/her control and that he/she did not create the content of the material that was the subject of the access or connection.

(or)

(2) The defendant claims that when he/she provided access or connection to/from an electronic method of remotely transferring information that was not under his/her control, he/she acted in good faith to block the receipt or transmission of the (*describe nature of material*) information that he/she believed (was) (would be) sent.

#### COMMENT

Drawn from R.C. 2917.21(E)(1).

These affirmative defenses do not apply if the defendant conspired with a person who was actively involved in the creation or knowing distribution of the unlawful material in violation of R.C. 2917.21 or knowingly advertised the availability of material. R.C. 2917.21(E)(3).

#### (C) SCOPE OF EMPLOYMENT.

#### COMMENT

R.C. 2917.21(F) creates an exception to the prohibition of R.C. 2917.21(A)(5) through (A)(11). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. See *State v. Little* (Mar. 14, 1991), 8th Dist. No. 57033; *State v. Hassell* (May 5, 1993), 1st Dist. No C-920530.

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2nd Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

The defendant claims that he/she was (employed)(contracted) by a (newspaper)(magazine)(press association)(news agency)(news wire service)(cable channel)(cable operator)(radio or television station) and that he/she was (gathering) (processing) (transmitting)(compiling)(editing)(dissemination) information for the general public within the scope of his/her (employment) (contractual authority) in that capacity.

#### COMMENT

Drawn from R.C. 2917.21(F).

#### (D) LAWFUL BUSINESS PURPOSE. R.C. 2917.21(A)(7) and (8).

#### COMMENT

R.C. 2917.21(A)(7) and (8) require the defendant's conduct to be without a lawful business purpose. The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. See *State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable



doubt, with *Miamisburg v. Hanson*, 2nd Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

(E) **LAWFUL PURPOSE.** R.C. 2917.21(A)(11).

**COMMENT**

R.C. 2917.21(A)(11) require the defendant's conduct to be without a lawful purpose. The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. See *State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2nd Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

(F) **DEFINITIONS.**

(1) **GOOD FAITH.** "Good faith" means honesty in belief or purpose.

(2) **CABLE OPERATOR.** R.C. 1332.21, R.C. 2917.21.

**21. ADDITIONAL FINDINGS:**

(A) **PRIOR CONVICTION OF SAME OFFENSE.** OJI-CR 425.15; R.C. 2917.21(C)(2), R.C. 2917.21(C)(3).

(B) **ECONOMIC HARM.** If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the telecommunication resulted in economic harm and the amount of the economic harm. If your verdict is not guilty, you will not decide these issues.

**COMMENT**

This additional finding applies only to R.C. 2917.21(A)(4).

It is not necessary for the jury to return an exact value. It is sufficient if the finding is expressed as a monetary range required to determine the degree of offense. R.C. 2913.61.

**(C) DEFINITION:**

(1) ECONOMIC HARM. R.C. 2917.21(G)(1).

22. CONCLUSION. OJI-CR 425.01.

23. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

24. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

25. VERDICT FORM—ECONOMIC HARM. We, the jury, having found the defendant guilty of telecommunications harassment, further find beyond a reasonable doubt that the amount of the economic harm was \* \_\_\_\_\_.

\* Insert in ink one of the following categories:

*(Use appropriate alternative)*

**COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

*(Use appropriate alternative[s])*

(1) "less than \$1,000";

*(or)*

(2) "\$1,000 or more but less than \$7,500";

*(or)*

(3) "\$7,500 or more but less than \$150,000";

*(or)*

(4) "\$150,000 or more."

**CR 517.21(B) Telecommunications harassment R.C. 2917.21(B) (offenses committed before 8/6/16) [Rev. 1/7/17]**

1. The defendant is charged with telecommunications harassment. Before you can find



the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in (County) (*other jurisdiction*), Ohio, the defendant (made a telecommunication) (caused a telecommunication to be made) (permitted a telecommunication to be made from a telecommunications device that was under his/her/its control) with purpose to (abuse) (threaten) (harass) another person.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
3. TELECOMMUNICATION. R.C. 2917.21(E)(3), R.C. 2913.01.
4. TELECOMMUNICATION DEVICE. R.C. 2917.21(E)(3), R.C. 2913.01.
5. ADDITIONAL FINDING:  
(A) PRIOR CONVICTION OF SAME OFFENSE. OJI-CR 425.15; R.C. 2917.21(C)(2).
6. CONCLUSION. OJI-CR 425.01.
7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.21(B) Telecommunications harassment R.C. 2917.21(B) (offenses committed on and after 8/16/16) [Rev. 1/7/17]**

1. The defendant is charged with telecommunications harassment. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in (County) (*other jurisdiction*), Ohio, the defendant

*(Use appropriate alternative[s])*

(B)(1) (made a telecommunication) (caused a telecommunication to be made) (permitted a telecommunication to be made from a telecommunications device that was under his/her/its control) with purpose to (abuse) (threaten) (harass) another person;

*(or)*

(B)(2) knowingly posted a/an (text) (audio statement) (image on an internet web site or web page) for the purpose of (abusing) (threatening) (harassing) another person.

2. TELECOMMUNICATION. R.C. 2917.21(E)(3), R.C. 2913.01.
3. TELECOMMUNICATION DEVICE. R.C. 2917.21(E)(3), R.C. 2913.01.
4. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
5. THREAT. "Threat" means (a statement) (conduct) (*describe other means of communication*), whether direct or indirect, exerting pressure sufficient to (overcome the will of another) (make another fearful or apprehensive of injury or harm).

**COMMENT**

Drawn from *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501. The terms

“harass” and “abuse” are not defined by statute. “The fact that the statute does not place legal definitions on each of these terms demonstrates that the General Assembly intended to prohibit conduct that is easily definable by the common everyday meaning of these words. A person of ordinary intelligence would know what type of conduct is prohibited.” *State v. Kronenberg*, 8th Dist. Cuyahoga, No. 101403, 2015-Ohio-1020, quoting *State v. Dennis*, 3rd Dist. Allen No. 1-97-42 (Oct. 30, 1997).

6. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

7. INTERNET. “Internet” means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

#### COMMENT

R.C. 1.59. R.C. 2909.01(G) provides that “internet” has the same meaning as in R.C. 431.42. Because R.C. 341.42 does not define “internet,” the Committee believes that the default definition contained in R.C. 1.59 applies.

8. AFFIRMATIVE DEFENSE:

(A) GENERAL. OJI-CR 417.27.

(B) PROVIDING ACCESS.

#### COMMENT

R.C. 2917.21(E)(1) creates an exception to the prohibition of R.C. 2917.21(B). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant’s status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th



Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2nd Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

(Use appropriate alternative[s])

(1) The defendant claims that all he/she did was provide (access or connection) (capabilities that were incidental to providing access or connection) to/from an electronic method of remotely transferring information that was not under his/her control and that he/she did not create the content of the material that was the subject of the access or connection;

(or)

(2) The defendant claims that when he/she provided access or connection to/from an electronic method of remotely transferring information that was not under his/her control, he/she acted in good faith to block the receipt or transmission of (describe nature of material) that he/she believed (was) (would be) sent.

#### COMMENT

Drawn from R.C. 2917.21(E)(1).

These affirmative defenses do not apply if the defendant conspired with a person who was actively involved in the creation or knowing distribution of the unlawful material in violation of R.C. 2917.21 or who knowingly advertised the availability of the material. R.C. 2917.21(E)(3).

#### (C) SCOPE OF EMPLOYMENT.

#### COMMENT

R.C. 2917.21(F) creates an exception to the prohibition of R.C. 2917.21(B)(2). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant's status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2nd Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

The defendant claims that he/she was (employed) (contracted) by a (newspaper) (magazine) (press association) (news agency) (news wire service) (cable channel) (cable operator) (radio or television station) and that he/she was (gathering) (processing) (transmitting) (compiling) (editing) (disseminating) information for the general public within the scope of his/her (employment) (contractual authority) in that capacity.

#### COMMENT

Drawn from R.C. 2917.21(F).

#### (D) DEFINITIONS:

- (1) GOOD FAITH. "Good faith" means honesty in belief or purpose.
- (2) CABLE OPERATOR. R.C. 1332.21, R.C. 2917.21.

#### 9. ADDITIONAL FINDING:

- (A) PRIOR CONVICTION OF SAME OFFENSE. OJI-CR 425.15; R.C. 2917.21(C)(2).

#### 10. CONCLUSION. OJI-CR 425.01.

#### 11. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

#### 12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.211 Nonconsensual dissemination of private sexual images R.C. 2917.211 (offenses committed on and after 3/22/19) [Rev. 12/4/21]**

#### COMMENT

R.C. 2917.211(D) creates exceptions for specified entities to the prohibitions of R.C. 2917.211. The Committee believes that the determination of whether these exceptions are applicable is not a jury question and no instructions as to these exceptions are necessary.

1. The defendant is charged with nonconsensual dissemination of private sexual



images. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant knowingly disseminated an image of another person and all of the following apply:

- (A) the person in the image was eighteen years of age or older; and
- (B) the person in the image can be identified from (the image itself) (information displayed in connection with the image and the defendant supplied the identifying information); and
- (C) the person in the image was (in a state of nudity) (engaged in a sexual act); and
- (D) the image was disseminated without consent from the person in the image; and
- (E) the image was disseminated with the intent to harm the person in the image.

2. DISSEMINATE. “Disseminate” means to post, distribute, or publish on a computer device, computer network, web site, or other electronic device or medium of communication.

**COMMENT**

R.C. 2917.211(A).

3. IMAGE. “Image” means a photograph, film, videotape, digital recording, or other depiction or portrayal of a person.

**COMMENT**

R.C. 2917.211(A).

4. SEXUAL ACT. “Sexual act” means any of the following:

- (A) sexual activity;
- (B) masturbation;
- (C) an act involving a bodily substance that is performed for the purpose of sexual arousal or gratification; or
- (D) sado-masochistic abuse.

**COMMENT**

R.C. 2917.211(A)(9).

5. SEXUAL ACTIVITY. OJI-CR 417.39 § 1.

6. SEXUAL CONDUCT. OJI-CR 417.39 § 2.
7. MASTURBATION. OJI-CR 417.39 § 8.
8. SADO-MASOCHISTIC ABUSE. OJI-CR 417.39 § 27.
9. AFFIRMATIVE DEFENSE:

#### COMMENT

R.C. 2917.211(C) creates certain circumstances where the dissemination of the image is not prohibited. The Committee believes that these are affirmative defenses under R.C. 2901.05(D) or in the nature of affirmative defenses and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant. The Committee believes that *Nucklos* should only apply when the defendant’s status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

- (A) GENERAL. OJI-CR 417.27.
- (B) CRIMINAL INVESTIGATION. The image was disseminated for the purpose of a criminal investigation that is otherwise lawful.

#### COMMENT

R.C. 2917.211(C)(1).

- (C) REPORTING UNLAWFUL CONDUCT. The image was disseminated for the purpose of, or in connection with, the reporting of unlawful conduct.



**COMMENT**

R.C. 2917.211(C)(2).

(D) **NEWS REPORT, ARTISTIC, OR EXPRESSIVE WORK.** The image was part of a/an (news report) (commentary) (artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work).

**COMMENT**

R.C. 2917.211(C)(3).

(E) **LAW ENFORCEMENT OR CORRECTIONS.** The image was disseminated by a (law enforcement officer) (corrections officer or guard in a detention facility) acting within the scope of the person's official duties.

**COMMENT**

R.C. 2917.211(C)(4).

(F) **LAWFUL PUBLIC PURPOSE.** The image was disseminated for (*describe lawful public purpose*).

**COMMENT**

R.C. 2917.211(C)(5).

(G) **KNOWINGLY AND WILLINGLY, NO EXPECTATION OF PRIVACY.** The person in the image was knowingly and willingly (in a state of nudity) (engaged in a sexual act) and was knowingly and willingly in a location in which the person does not have a reasonable expectation of privacy.

**COMMENT**

R.C. 2917.211(C)(6).

(H) **MEDICAL TREATMENT OR EXAMINATION.** The image was disseminated for the purpose of medical treatment or examination.

## COMMENT

R.C. 2917.211(C)(7).

10. NUDITY. OJI-CR 417.39 § 10.

11. ADDITIONAL FINDING:

(A) PRIOR CONVICTION. OJI-CR 425.15.

12. CONCLUSION. OJI-CR 425.01.

13. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

14. CONCLUSION WITH LESSER INCLUDED DEFENSE. OJI-CR 424.09, OJI-CR 425.11.

**CR 517.31 Inducing panic R.C. 2917.31 [Rev. 9/14/13]**

1. The defendant is charged with inducing panic. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant caused (the evacuation of a public place) (serious public [inconvenience] [alarm]) by

*(Use appropriate alternative[s])*

(A)(1) (initiating) (circulating) a (report) (warning) of an alleged or impending (fire) (explosion) (*describe crime*) (*describe other catastrophe*) while knowing that such (report) (warning) was false;

## COMMENT

R.C. 2917.31(B) provides that R.C. 2917.31(A)(1) does not apply to a person conducting an authorized fire or emergency drill. The Committee believes that this exception, or exemption, may necessitate instruction as an element of the offense. See *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to a defendant as an element as opposed to an



affirmative defense. *See State v. Durbin*, 9th Dist. Medina No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is either an element of the offense that the state must prove beyond a reasonable doubt or an affirmative defense that a defendant must prove.

(or)

(A)(2) threatening to commit (*describe offense of violence*);

#### COMMENT

The Committee expresses no opinion regarding the requisite culpable mental state for an R.C. 2917.31(A)(2) offense. Where the statute does not provide a specific culpable mental state, it either charges a strict liability offense or requires proof of the culpable mental state of “recklessly.” *See State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830; *State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121; *State v. Wac*, 68 Ohio St.2d 84 (1981).

The Committee believes that whether the threatened crime is an “offense of violence” is a matter of law to be determined by the court. R.C. 2901.01 defines offenses of violence.

(or)

(A)(3) committing (*describe applicable offense[s]*) with reckless disregard of the likelihood that (its) (their) commission would cause serious public (inconvenience) (alarm).

#### COMMENT

When instructing on a violation of subsection (A)(3), the court must give instructions identifying the underlying offense(s) and describing every element thereof, including the state of mind, with the necessary definitions and explanations.

2. PERSON CONDUCTING AN AUTHORIZED FIRE OR EMERGENCY DRILL (ADDITIONAL). Before you can find the defendant guilty, you must also find beyond a reasonable doubt that the defendant was not a person conducting an authorized (fire) (emergency) drill.

#### COMMENT

Drawn from R.C. 2917.31(B). This instruction applies only to a violation of R.C. 2917.31(A)(1). The trial judge should give this instruction only if the judge concludes this is an element. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

4. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
5. CAUSE. OJI-CR 417.23.
6. ADDITIONAL FINDING(S):

(A) PHYSICAL HARM. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant's conduct resulted in physical harm to any person. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.31(C)(3). This instruction also applies to R.C. 2917.31(C)(7).

(B) ECONOMIC HARM (for offenses committed before 9/30/11). If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant's conduct resulted in economic harm of five hundred dollars or more but less than five thousand dollars, five thousand dollars or more but less than one hundred thousand dollars, or one hundred thousand dollars or more. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from former R.C. 2917.31(C)(4)(a)-(c). This instruction also applies to former R.C. 2917.31(C)(8).

(C) ECONOMIC HARM (for offenses committed on or after 9/30/11). If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant's conduct resulted in economic harm of one thousand dollars or more but less than seven thousand five hundred dollars, seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, or one hundred fifty thousand dollars or more. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.31(C)(4)(a)-(c).

(D) WEAPON OF MASS DESTRUCTION. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant's conduct involved the (purported) (threatened) (actual) use of a weapon of mass destruction. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.31(C)(6). This instruction also applies to R.C. 2917.31(C)(7)



and (C)(8).

(E) **PHYSICAL HARM TO ANY PERSON.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

(F) **WEAPON OF MASS DESTRUCTION—ECONOMIC LOSS.** If your verdict is guilty and you have separately decided beyond a reasonable doubt that the defendant’s conduct involved the (purported) (threatened) (actual) use of a weapon of mass destruction, you will then separately decide beyond a reasonable doubt whether the defendant’s conduct resulted in economic harm of one hundred thousand dollars or more. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.31(C)(8).

(G) **DEFINITIONS:**

(1) **PHYSICAL HARM TO ANY PERSON.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

(2) **ECONOMIC HARM.** R.C. 2917.31(E)(1)(a) and (b).

(3) **EMERGENCY MEDICAL SERVICES PERSONNEL.** R.C. 2917.31(E)(5), R.C. 2133.21.

(4) **SCHOOL.** R.C. 2917.31(E)(2).

(5) **INSTITUTION OF HIGHER EDUCATION.** R.C. 2917.31(E)(6)(a)-(c).

(6) **WEAPON OF MASS DESTRUCTION.** R.C. 2917.31(E)(3)(a)-(d).

(7) **BIOLOGICAL AGENT.** R.C. 2917.31(E)(4), R.C. 2917.33.

7. **CONCLUSION.** OJI-CR 425.01.

8. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

9. VERDICT FORM—ECONOMIC HARM. We, the jury, having found the defendant guilty of inducing panic, further find beyond a reasonable doubt that the amount of the economic harm was \*\_\_\_\_\_.

\* Insert in ink one of the following categories:

*(Use appropriate alternative)*

(A) (offenses committed before 9/30/11)

*(Use appropriate alternative[s])*

**COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

(1) less than \$500;

*(or)*

(2) \$500 or more but less than \$5,000;

*(or)*

(3) \$5,000 or more but less than \$100,000;

*(or)*

(4) \$100,000 dollars or more

*(or)*

(B) (offenses committed on and after 9/30/11)

**COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

*(Use appropriate alternative[s])*

(1) less than \$1,000;

*(or)*

(2) \$1,000 or more but less than \$7,500;

*(or)*

(3) \$7,500 or more but less than \$150,000;

*(or)*



(4) \$150,000 or more

**CR 517.32 Making false alarms R.C. 2917.32 [Rev. 9/14/13]**

1. The defendant has been charged with making false alarms. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

**COMMENT**

R.C. 2917.32(B) provides that R.C. 2917.32(A) does not apply to a person conducting an authorized fire or emergency drill. The Committee believes that this exception, or exemption, may necessitate instruction as an element of the offense. See *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to a defendant as an element as opposed to an affirmative defense. See *State v. Durbin*, 9th Dist. Medina No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is either an element of the offense that the state must prove beyond a reasonable doubt or an affirmative defense that a defendant must prove.

*(Use appropriate alternative)*

(A)(1) (initiated) (circulated) a (report) (warning) of an alleged or impending (fire) (explosion) (crime) (*describe other catastrophe*), knowing that the (report) (warning) was false and likely to cause public (inconvenience) (alarm);

(or)

(A)(2) knowingly caused a false alarm of (fire) (*describe other emergency*) to be transmitted (to) (within) a (public) (private) organization for dealing with emergencies involving a risk of physical harm to (persons) (property);

(or)

(A)(3) reported to a law enforcement agency (*describe alleged offense*) (*describe other incident within its concern*), knowing that it did not occur.

2. PERSON CONDUCTING AN AUTHORIZED FIRE OR EMERGENCY DRILL (ADDITIONAL). Before you can find the defendant guilty, you must also find beyond

a reasonable doubt that the defendant was not a person conducting an authorized (fire) (emergency) drill.

**COMMENT**

Drawn from R.C. 2917.32(B). The trial judge should give this instruction only if the judge concludes this is an element. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

3. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).
4. **CAUSE.** OJI-CR 417.23.
5. **RISK.** “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01.

6. **PHYSICAL HARM TO PERSONS.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01.

7. **PHYSICAL HARM TO PROPERTY.** R.C. 2901.01.
8. **LAW ENFORCEMENT AGENCY.** “Law enforcement agency” includes any agency office or organization in which a law enforcement officer functions to conserve the peace, enforce the law or arrest offenders.

**COMMENT**

Drawn from R.C. 2901.01.

Depending on the facts, an instruction may be required about who is a “law enforcement officer” as defined in R.C. 2901.01.

9. **ADDITIONAL FINDING(S):**

(A) **ECONOMIC HARM** (for offenses committed before 9/30/11). If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant’s conduct resulted in economic harm of five hundred dollars or more but



less than five thousand dollars, five thousand dollars or more but less than one hundred thousand dollars, or one hundred thousand dollars or more. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.32(C).

(B) **ECONOMIC HARM** (for offenses committed on or after 9/30/11). If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant's conduct resulted in economic harm of one thousand dollars or more but less than seven thousand five hundred dollars, seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, or one hundred fifty thousand dollars or more. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.32(C)(3), (5), and (6).

(C) **WEAPON OF MASS DESTRUCTION**. If your verdict is guilty, you will then separately decide beyond a reasonable doubt whether the defendant's conduct involved the (purported) (threatened) (actual) use of a weapon of mass destruction. If your verdict is not guilty, you will not decide this issue.

**COMMENT**

Drawn from R.C. 2917.32(C)(4).

**(D) DEFINITIONS:**

- (1) **ECONOMIC HARM**. R.C. 2917.32(E), R.C. 2917.31(E)(1)(a) and (b).
- (2) **WEAPON OF MASS DESTRUCTION**. R.C. 2917.32(E), R.C. 2917.31(E)(3)(a)-(d).
- (3) **BIOLOGICAL AGENT**. R.C. 2917.31(E)(4), R.C. 2917.33.

**10. CONCLUSION. OJI-CR 425.01.****11. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.**

**12. VERDICT FORM—ECONOMIC HARM.** We, the jury, having found the defendant guilty of making false alarms, further find beyond a reasonable doubt that the amount of the economic harm was \*\_\_\_\_\_.

\* Insert in ink one of the following categories:

*(Use appropriate alternative)*

(A) (offenses committed before 9/30/11)

*(Use appropriate alternative[s])*

**COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

(1) less than \$500;

*(or)*

(2) \$500 or more but less than \$5,000;

*(or)*

(3) \$5,000 or more but less than \$100,000;

*(or)*

(4) \$100,000 dollars or more

*(or)*

(B) (offenses committed on and after 9/30/11)

**COMMENT**

The court should select the following monetary range set forth in the indictment and all lesser monetary ranges reasonably raised by the evidence.

*(Use appropriate alternative[s])*

(1) less than \$1,000;

*(or)*

(2) \$1,000 or more but less than \$7,500;

*(or)*

(3) \$7,500 or more but less than \$150,000;

*(or)*

(4) \$150,000 or more

**CR 517.33 Unlawful possession or use of a hoax weapon of mass destruction  
R.C. 2917.33 [Rev. 12-11-10]**

1. The defendant is charged with (possession) (use) of a hoax weapon of mass



destruction. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, without privilege to do so, (manufactured) (possessed) (sold) (delivered) (displayed) (used) (threatened to use) (attempted to use) (conspired to use) (made readily accessible to others) a hoax weapon of mass destruction with the intent to deceive or otherwise mislead one or more persons into believing that the hoax weapon of mass destruction would cause terror, bodily harm, or property damage.

2. **PRIVILEGE.** “Privilege” means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

**COMMENT**

R.C. 2901.01.

3. **POSSESSION.** OJI-CR 417.21; R.C. 2901.21.

4. **SOLD.** “Sale” includes delivery, barter, exchange, transfer, gift or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

**COMMENT**

R.C. 3719.01.

5. **THREATENED.** “Threat” means (a statement) (conduct) (*describe other means of communication*) whether direct or indirect, exerting pressure sufficient to (overcome the will of another) (make another fearful or apprehensive of injury or harm).

**COMMENT**

OJI-CR 417.35. Drawn from *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501.

6. **ATTEMPT.** An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in the commission of this offense.

**COMMENT**

Drawn from R.C. 2923.02.

7. **CONSPIRE.** Conspire means to plan with one or more other persons to commit a criminal act.

8. HOAX WEAPON OF MASS DESTRUCTION. R.C. 2917.33(E).
9. PURPOSE. OJI-CR 417.01; R.C. 2901.22.

**COMMENT**

The prohibition in R.C. 2917.33 is to possess or use a hoax weapon of mass destruction "with intent to deceive or otherwise mislead . . ." Since intent is the same as purpose the Committee believes the jury should be instructed as to the definition of purpose. OJI-CR 417.01 § 4.

10. DECEPTION. OJI-CR 513.02 § 10; R.C. 2913.01.
11. AFFIRMATIVE DEFENSE.

**COMMENT**

R.C. 2917.33(B) creates an exception to the prohibition of R.C. 2917.33(A). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little* (Mar. 14, 1991), 8th Dist. No. 57033; *State v. Hassell* (May 5, 1993), 1st Dist. No. C-920530.

- (A) GENERAL. OJI-CR 417.27.
- (B) MEMBER OR EMPLOYEE OF U.S. ARMED FORCES OR OTHER AUTHORIZED PERSON. R.C. 2917.33(B).
12. CONCLUSION. OJI-CR 413.01.
13. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
14. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 413.21, OJI-CR 413.23.

**CR 517.40 Crowd safety R.C. 2917.40 [Rev. 5-31-02]**

1. The defendant is charged with violation of the crowd safety statute. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

(Use appropriate alternative)

(B)(1) (sold) (offered to sell) (offered in return for a donation) any ticket that was not numbered and did not correspond to a specific seat for admission to a (live entertainment performance held in a restricted entertainment area for which more than 8,000 tickets were offered to the public) (concert for which more than 3,000 tickets were offered to the public).

(or)



(B)(2) advertised a (live entertainment performance to be held in a restricted entertainment area for which more than 8,000 tickets were offered to the public) (concert for which more than 3,000 tickets were offered to the public) without the words "Reserved Seats Only" in the advertisement.

(or)

(C) (owned) (operated) any restricted entertainment area and failed to open, maintain and properly staff at least (*specify required number of entrances or turnstiles pursuant to R.C. 2917.40*) entrances for a minimum of ninety minutes prior to the scheduled start of the live entertainment performance held in the restricted entertainment area for which more than 3,000 tickets were (sold) (offered for sale) (offered in return for a donation).

(or)

(F) entered into a contract for a live entertainment performance that did not (permit) (require) compliance with (*describe alleged contractual defect in violation of R.C. 2917.40*).

2. LIVE ENTERTAINMENT PERFORMANCE. R.C. 2917.40(A)(1).
3. RESTRICTED ENTERTAINMENT AREA. R.C. 2917.40(A)(2).
4. CONCERT. R.C. 2917.40(A)(3).
5. FACILITY. R.C. 2917.40(A)(4).
6. AFFIRMATIVE DEFENSES:
  - (A) GENERAL. OJI-CR 417.27.
  - (B) EXEMPTION. R.C. 2917.40(D)(1).
  - (C) MULTIPLE ENTERTAINMENT. R.C. 2917.40(G)(1).
  - (D) ACCEPTED ENTERTAINMENT. R.C. 2917.40(G)(2).
7. CONCLUSION. OJI-CR 425.01.
8. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.41 Misconduct involving a public transportation system R.C. 2917.41**  
**[Rev. 5-31-02]**

1. The defendant is charged with misconduct involving a public transportation system. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant

(Use appropriate alternative)

(A) evaded the payment of the known fares of a public transportation system.

(or)

(B) altered a (transfer) (pass) (ticket) (token) of a public transportation system with purpose of evading the payment of fares or defrauding the system.

(or)

(C)(1) played sound equipment without the proper use of a private earphone, while (in a facility) (on a vehicle) of a public transportation system.

(or)

(C)(2) (smoked) (ate) (drank) in an area where the activity is clearly marked as being prohibited, while (in a facility) (on a vehicle) of a public transportation system.

(or)

(C)(3) (expectorated) (spat) upon a public transportation (facility) (vehicle), while (in a facility) (on a vehicle) of a public transportation system.

(or)

(D) (wrote on) (defaced) (drew on) (or otherwise marked on) any (facility) (vehicle) of a public transportation system.

2. PUBLIC TRANSPORTATION SYSTEM. R.C. Chap. 306.

3. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

4. CONCLUSION. OJI-CR 425.01.

5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 517.47 Improperly handling infectious agents R.C. 2917.47 [Rev. 5-31-02]**

1. The defendant is charged with improperly handling infectious agents. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

(A) knowingly (possessed) (sent) (received) (caused to be [sent] [received]) a(n) (isolate) (derivative of an isolate) of an infectious agent.

2. INFECTIOUS AGENT. "Infectious agent" means a microorganism such as virus, bacterium, or similar agent that causes death in a human being.

**COMMENT**

R.C. 2917.47.

3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

4. POSSESS. R.C. 2925.01.



5. CAUSE. OJI-CR 417.23.
6. AFFIRMATIVE DEFENSE:
  - (A) GENERAL. OJI-CR 417.27.
  - (B) PERMITTED PURPOSES. R.C. 2917.47(B).
7. CONCLUSION. OJI-CR 425.01.
8. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

*(Text continued on page 27)*

## Chapter CR 521

# OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

### COMMENT

Senate Bill 2 (S.B. 2), effective July 1, 1996, is primarily felony sentencing legislation. It applies prospectively to offenses committed on and after July 1, 1996 except as may be otherwise required by RC 1.58. Some instructions in this Chapter apply only to offenses committed on and after July 1, 1996. The other instructions are not affected by S.B. 2.

- CR 521.02 Bribery R.C. 2921.02 (offenses committed before 10/1/12) *[Rev. 9/12/20]*
- CR 521.02 Bribery R.C. 2921.02 (offenses committed on and after 10/1/12) *[Rev. 9/12/20]*
- CR 521.03 Intimidation (offenses committed on and after 11/6/96)
- CR 521.04 Intimidation of a(n) attorney, victim or witness in a criminal case (offenses committed on and after 9/3/96 but before 6/4/12) *[Rev. 5-12-12]*
- CR 521.04 Intimidation of a/an attorney, victim or witness in a criminal case (offenses committed on and after 6/4/12) *[Rev. 9/12/20]*
- CR 521.05 Retaliation R.C. 2921.05 *[Rev. 9/12/20]*
- CR 521.11 Perjury
- CR 521.12 Tampering with evidence
- CR 521.13 Falsification; in theft offense; to purchase firearm; to obtain concealed-handgun license; regarding a removal proceeding R.C. 2921.13 (offenses committed on and after 3/23/15) *[Rev. 10/10/20]*
- CR 521.14 Making or causing a false report of child abuse or neglect
- CR 521.17 Restrictions on present or former public officials or employees R.C. 102.03 (offenses committed on and after 9/29/17) *[Rev. 1/30/21]*
- CR 521.21 Compounding a crime
- CR 521.22(A) Failure to report a crime: a felony or the unauthorized use of computer, cable, or telecommunication property R.C. 2921.22(A) (offenses committed on and after 4/7/09) *[Rev. 10/10/20]*
- CR 521.22(B) Failure to report a crime: gunshot/stab wound R.C. 2921.22(B) (offenses committed on and after 4/6/17) *[Rev. 10/10/20]*
- CR 521.22(C) Failure to report knowledge of a death R.C. 2921.22(C) (offenses committed on and after 4/6/17) *[Rev. 10/10/20]*
- CR 521.22(D) Failure to report knowledge of a death (offenses committed on and after 3/18/97)
- CR 521.22(E) Failure to report a burn injury R.C. 2921.22(E) (offenses committed on and after 4/6/17) *[Rev. 10/10/20]*



- CR 521.24 Disclosure of confidential information R.C. 2921.24 (offenses committed on and after 3/30/07) *[Rev. 11/7/20]*
- CR 521.31 Obstructing official business R.C. 2921.31 *[Rev. 11/7/20]*
- CR 521.32(A) Obstructing justice, where the person aided by the defendant was an adult R.C. 2921.32 (offenses committed on and after 6/27/12) *[Rev. 5/22/21]*
- CR 521.32(B) Obstructing justice, where the person aided by the defendant was a minor R.C. 2921.32 (offenses committed on and after 6/27/12) *[Rev. 5/22/21]*
- CR 521.321(A) Assaulting a police dog or police horse R.C. 2921.321 *[Rev. 5/22/21]*
- CR 521.321(B) Harassing a police dog or police horse R.C. 2921.321 *[Rev. 5/22/21]*
- CR 521.321(C) Assaulting an assistance dog R.C. 2921.321 *[Rev. 5/22/21]*
- CR 521.321(D) Harassing an assistance dog R.C. 2921.321 *[Rev. 5/22/21]*
- CR 521.33 Resisting arrest R.C. 2921.33 (offenses committed on and after 9/16/97) *[Rev. 5/22/21]*
- CR 521.331 Failure to comply with an order or signal of a police officer R.C. 2931.331 *[Rev. 10/9/21]*
- CR 521.34(A)(1) Escape R.C. 2921.34(A)(1) (offenses committed before 9/30/11) *[Rev. 12-10-11]*
- CR 521.34(A)(1) Escape R.C. 2921.34(A)(1) (offenses committed on and after 9/30/11) *[Rev. 12-10-11]*
- CR 521.34(A)(2) Escape (offense committed by sexually violent predator on and after 1/1/97)
- CR 521.35(A) Aiding escape or resistance to lawful authority (conveyance of instrument or thing into detention facility)
- CR 521.35(B) Aiding escape or resistance to lawful authority
- CR 521.36 Illegal conveyance of weapons, drugs, or prohibited items R.C. 2921.36 (offenses committed on and after 10/5/09) *[Rev. 11/5/16]*
- CR 521.38 Harassment with a bodily substance R.C. 2921.38 (offenses committed on and after 4/4/07) *[Rev. 10/9/21]*
- CR 521.41 Theft in office
- CR 521.42 Having an unlawful interest in a public contract *[Rev. 1-22-11]*
- CR 521.43(A) Soliciting improper compensation (illegal or additional compensation)
- CR 521.43(B) Soliciting improper compensation (for appointment, preference)
- CR 521.43(C) Soliciting improper compensation (coerced contributions)
- CR 521.44(A) Dereliction of duty (law enforcement officer)
- CR 521.44(B) Dereliction of duty (law enforcement, ministerial, judicial officer)
- CR 521.44(C) Dereliction of duty (officer of a detention facility)
- CR 521.44(D) Dereliction of duty (public official)
- CR 521.44(E) Dereliction of duty (public servant)
- CR 521.45 Interfering with civil rights
- CR 521.51(B) Impersonating a peace officer or private policeman
- CR 521.51(C) Impersonating a peace officer or private policeman (arrest or search)
- CR 521.51(D) Impersonating a peace officer or private policeman (to commit or facilitate an offense)

**CR 521.51(E) Impersonating a peace officer or private policeman (while committing a felony)**

**CR 521.52 Using sham legal process**

**CR 521.02 Bribery R.C. 2921.02 (offenses committed before 10/1/12) [Rev. 9/12/20]**

1. The defendant is charged with bribery. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant

*(Use appropriate alternative)*

(A) (promised) (offered) (gave) any valuable (thing) (benefit), with purpose to corrupt a (public servant) (party official), or improperly to influence him/her with respect to the discharge of his/her duty, whether before or after the (public servant) (party official) was (elected) (appointed) (qualified) (employed) (summoned) (sworn).

*(or)*

(B) knowingly (solicited) (accepted) for (himself/herself) (another person) any valuable (thing) (benefit) to corrupt or improperly influence (him/her) (another [public servant] [party official]) with respect to the discharge of (his/her) (the other [public servant's] [party official's] duty), whether before or after the defendant was (elected) (appointed) (qualified) (employed) (summoned) (sworn) as a (public servant) (party official).

*(or)*

(C) (promised) (offered) (gave) a (witness) (another person) any valuable (thing) (benefit), with purpose to corrupt the witness or to influence him/her with respect to his/her testimony in (*describe official proceeding*), either before or after the witness was subpoenaed or sworn.

*(or)*

(D) knowingly (solicited) (accepted) for (himself/herself) (another person) any valuable (thing) (benefit) to corrupt or improperly influence the defendant with respect to his/her testimony in (*describe official proceeding*), either before or after the defendant was subpoenaed or sworn as a witness.

2. **PURPOSELY.** OJI-CR 417.01; R.C. 2901.22(A).

3. **CORRUPT.** "To corrupt" means to destroy or undermine the honesty or integrity of another; to taint; to infect.

4. **PUBLIC SERVANT.** R.C. 2921.01(B).

5. **PARTY OFFICIAL.** "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.



**COMMENT**

R.C. 2921.01(C).

6. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
7. SOLICITED. "To solicit" means to entice, urge, lure or ask.
8. OFFICIAL PROCEEDING. R.C. 2921.01(D).
9. CONCLUSION. OJI-CR 425.01.
10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.02 Bribery R.C. 2921.02 (offenses committed on and after 10/1/12)**  
*[Rev. 9/12/20]*

1. The defendant is charged with bribery. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant

*(Use appropriate alternative)*

(A) (promised) (offered) (gave) any valuable (thing) (benefit), with purpose to (corrupt) (improperly influence) a (public servant) (party official) with respect to the discharge of the (public servant's) (party official's) duty, whether before or after the (public servant) (party official) was (elected) (appointed) (qualified) (employed) (summoned) (sworn);

*(or)*

(B) knowingly (solicited) (accepted) for (himself/herself) (another person) any valuable (thing) (benefit) to (corrupt) (improperly influence) a (public servant) (party official) with respect to the discharge of the (public servant's) (party official's) duty, whether before or after the defendant was (elected) (appointed) (qualified) (employed) (summoned) (sworn) as a (public servant) (party official);

*(or)*

(C) (promised) (offered) (gave) a (witness) (another person) any valuable (thing) (benefit), with purpose to corrupt the witness or to improperly influence him/her with respect to his/her testimony in (*describe official proceeding*), either before or after the witness was subpoenaed or sworn;

*(or)*

(D) knowingly (solicited) (accepted) for (himself/herself) (another person) any valuable (thing) (benefit) to corrupt or improperly influence the defendant with respect to his/her testimony in (*describe official proceeding*), either before or after the defendant was subpoenaed or sworn as a witness;

(or)

(E) (promised) (offered) (gave) a(n) (director) (officer) (employee) of a municipal school district transformation alliance any valuable (thing) (benefit), with purpose to (corrupt) (improperly influence) the (director) (officer) (employee) with respect to that person's duties, either before or after the (director) (officer) (employee) was (appointed) (employed);

(or)

(F) either before or after he/she was (appointed) (employed) as a(n) (director) (officer) (employee) of a municipal school district transformation alliance, knowingly (solicited) (accepted) for (himself/herself) (another person) any valuable (thing) (benefit) to (corrupt) (improperly influence), in the discharge of his/her duties, (the defendant) (another [director] [officer] [employee] of a municipal school district transformation alliance).

2. VALUABLE THING, VALUABLE BENEFIT (ADDITIONAL). "Valuable (thing) (benefit)" includes, but is not limited to, a contribution.

#### COMMENT

R.C. 2921.01.

The trial judge should give this instruction only if the "valuable thing" or "valuable benefit" is a contribution.

3. CONTRIBUTION. R.C. 2921.01, R.C. 3517.01.
4. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
5. CORRUPT. "To corrupt" means to destroy or undermine the honesty or integrity of another; to taint; to affect.

#### COMMENT

*State v. Marshall*, 8th Dist. Cuyahoga No. 100736, 2015-Ohio-2511.

6. PUBLIC SERVANT. R.C. 2921.01.
7. PARTY OFFICIAL. "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

#### COMMENT

R.C. 2921.01.



8. **DUTY.** “Duty” means the obligation of a public servant or party official in connection with his/her office.

**COMMENT**

Drawn from *State v. Knight*, 140 Ohio App.3d 797 (1st Dist. 2000).

9. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).

10. **SOLICITED.** “To solicit” means to seek, ask, influence, invite, tempt, lead on, or bring pressure to bear.

**COMMENT**

*State v. Skatzes*, 104 Ohio St.3d 195, 2004-Ohio-6391.

11. **OFFICIAL PROCEEDING.** R.C. 2921.01.

12. **MUNICIPAL SCHOOL DISTRICT TRANSFORMATION ALLIANCE.** A “municipal school district transformation alliance” means a nonprofit corporation managed by a board of directors appointed by the mayor of a municipal corporation containing the greatest portion of a municipal school district’s territory.

**COMMENT**

R.C. 3311.86 and R.C. 3311.71(A)(2).

13. **MUNICIPAL SCHOOL DISTRICT.** A “municipal school district” means a school district that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management by the state superintendent of public instruction.

**COMMENT**

R.C. 3311.71(A)(1).

14. **CONCLUSION.** OJI-CR 425.01.

15. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 521.03 Intimidation R.C. 2921.03 (offenses committed on and after 11/6/96)**

1. The defendant is charged with intimidation. Before you can find the defendant guilty,

you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant knowingly and by (force) (unlawful threat of harm to any person or property) ([filing] [recording] [using] a materially false or fraudulent writing [with malicious purpose] [in bad faith] [in a wanton or reckless manner]) attempted to (influence) (intimidate) (hinder) a (public servant) (party official) (witness) ([attorney] [witness] involved in a civil action or proceeding) in the discharge of his/her duty.

#### COMMENT

H.B. 644, effective November 6, 1996, which amended R.C. 2921.03, failed to include the amendment to this section contained in H.B. 88, effective September 3, 1996, which added the words, "attorney or witness involved in a civil action or proceeding." Therefore, in accordance with R.C. 1.52(B), since the amendments contained in each enactment are not irreconcilable, the Committee has harmonized them so that effect may be given to each.

2. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).
3. **FORCE.** "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

#### COMMENT

R.C. 2901.01(A).

4. **THREAT.** "Threat" includes direct and indirect threat.
5. **MATERIALLY FALSE OR FRAUDULENT.** A writing is materially false or fraudulent when it is not substantially true. The truth or falsity of a writing depends on the natural and obvious meaning of the words taking into consideration all the surrounding circumstances.
6. **MALICIOUS.** "Malicious" means characterized by hatred, ill will, a spirit of revenge or a conscious disregard for the rights and safety of other persons.
7. **PURPOSE.** OJI-CR 417.01; R.C. 2901.22(A).
8. **WANTON OR RECKLESS.** OJI-CR 417.17; R.C. 2901.22(C).

#### COMMENT

The Committee believes that "wanton or reckless" as used in this section means "reckless" as defined in R.C. 2901.22(C).

9. **INTIMIDATE.** "Intimidate" means to frighten, scare, or bully.



10. PUBLIC SERVANT. R.C. 2921.01(B).

11. PARTY OFFICIAL. “Party official” means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

**COMMENT**

R.C. 2921.01(C).

12. WITNESS. “Witness” means any person who has or claims to have knowledge concerning a fact or facts about the issue(s) involved in a proceeding.

**COMMENT**

Drawn from *State v. Crider* (1984), 21 Ohio App.3d 268, 487 N.E.2d 911.

13. CONCLUSION. OJI-CR 425.01.

14. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.04 Intimidation of a(n) attorney, victim or witness in a criminal case**  
**R.C. 2921.04 (offenses committed on and after 9/3/96 but before**  
**6/4/12) [Rev. 5-12-12]**

1. The defendant is charged with intimidation of a(n) (attorney) (victim) (witness) in a criminal case. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant knowingly

*(Use appropriate alternative)*

(A) attempted to (intimidate) (hinder) (the victim of a crime in the filing or prosecution of criminal charges) (a witness involved in a criminal action or proceeding in the discharge of his/her duties).

*(or)*

(B) and by (force) (unlawful threat of harm to any [person] [property]), attempted to (influence) (intimidate) (hinder) (the victim of a crime in the filing or prosecution of criminal charges) ([an attorney] [a witness] involved in a criminal action or proceeding in the discharge of his/her duties).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. FORCE. “Force” means any violence, compulsion, or constraint physically exerted

by any means upon or against a person or thing.

**COMMENT**

R.C. 2901.01(A).

4. **THREAT.** "Threat" includes direct and indirect threat.
5. **INTIMIDATE.** "Intimidate" means to frighten, scare, or bully.
6. **WITNESS.** "Witness" means any person who has or claims to have knowledge concerning a fact or facts about the issue(s) involved in a criminal action or proceeding.

**COMMENT**

Drawn from *State v. Crider* (1984), 21 Ohio App.3d 268, 487 N.E.2d 911.

**7. AFFIRMATIVE DEFENSE.**

(A) **GENERAL.** OJI-CR 417.27.

(B) **RESOLVING A DISPUTE.** The defendant claims that he/she was attempting to resolve a dispute pertaining to the alleged commission of a criminal offense (prior) (subsequent) to the filing of a (complaint) (indictment) (information), by participating in the (arbitration) (mediation) (compromise) (settlement) (conciliation) of that dispute pursuant to (*describe authorization referred to in R.C. 2921.04 [C] [1]–[4]*).

**8. CONCLUSION.** OJI-CR 425.01.

**9. CONCLUSION WITH AFFIRMATIVE DEFENSE.** OJI-CR 425.03.

**10. CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 521.04 Intimidation of a/an attorney, victim, or witness in a criminal case**  
**R.C. 2921.04 (offenses committed on and after 6/4/12) [Rev. 9/12/20]**

1. The defendant is charged with intimidation of a/an (attorney) (victim) (witness) in a criminal case. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant knowingly

(*Use appropriate alternative*)

(A)(1) attempted to (intimidate) (hinder) the victim of a (crime) (delinquent act) in the (filing) (prosecution) of (criminal charges) (a delinquent child [action] [proceeding]);

(*or*)

(A)(2) attempted to intimidate a witness to a (criminal) (delinquent) act by reason of the person being a witness to that act;



(or)

(B) and by (force) (unlawful threat of harm to any [person] [property]) (unlawful threat to commit any offense or calumny against any person), attempted to (influence) (intimidate) (hinder) (the victim of a [crime] [delinquent act] in the filing or prosecution of [criminal charges] [a delinquent child (action) (proceeding)]) (a witness to a [criminal] [delinquent] act by reason of the person being a witness to that act) (an attorney by reason of the attorney's involvement in any [criminal action or proceeding] [delinquent child action or proceeding]).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. ATTEMPT. OJI-CR 523.02.
4. INTIMIDATE. "Intimidate" means to frighten, scare, or bully.

**COMMENT**

*State v. Roulette*, 4th Dist. Scioto No. 10CA3364, 2011-Ohio-6993. "Intimidation by definition involves creation of fear in a victim." *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501.

5. FORCE. "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

**COMMENT**

R.C. 2901.01.

6. UNLAWFUL THREAT OF HARM. An "unlawful threat of harm" has occurred only when the very making of the threat is itself unlawful because it violates established criminal or civil law.

**COMMENT**

Drawn from *State v. Serrano*, 8th Dist. Cuyahoga No. 102583, 2016-Ohio-4691; *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501.

7. THREAT. OJI-CR 417.35.
8. CALUMNY. "Calumny" means a false statement made to injure one's reputation or character.

**COMMENT**

OJI-CR 505.11, OJI-CR 505.12. This definition was approved by the court in

*State v. Cunningham*, 6th Dist. Lucas No. L-94-150 (Mar. 17, 1995). *See also State v. Zylko*, 8th Dist. Cuyahoga No. 89949, 2008-Ohio-3032.

9. WITNESS. "Witness" means any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act, whether or not criminal or delinquent child charges are actually filed.

**COMMENT**

R.C. 2921.04(E).

10. AFFIRMATIVE DEFENSE:

(A) GENERAL. OJI-CR 417.27.

(B) RESOLVING A DISPUTE. The defendant claims that he/she was attempting to resolve a dispute pertaining to the alleged commission of a criminal offense (prior) (subsequent) to the filing of a (complaint) (indictment) (information), by participating in the (arbitration) (mediation) (compromise) (settlement) (conciliation) of that dispute pursuant to (*describe authorization referred to in R.C. 2921.04[C] [1]–[4]*).

11. CONCLUSION. OJI-CR 425.01.

12. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

13. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.05 Retaliation R.C. 2921.05 [Rev. 9/12/20]**

1. The defendant is charged with retaliation. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant, purposely and by (force) (unlawful threat of harm to any person or property), retaliated against

*(Use appropriate alternative)*

(A) a (public servant) (party official) ([attorney] [witness] who was involved in a [civil] [criminal] action or proceeding) because the (public servant) (party official) (attorney) (witness) discharged his/her duties;

*(or)*

(B) the victim of a crime because he/she filed or prosecuted criminal charges.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

3. FORCE. "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.



**COMMENT**

R.C. 2901.01.

4. **UNLAWFUL THREAT OF HARM.** An “unlawful threat of harm” has occurred only when the very making of the threat is itself unlawful because it violates established criminal or civil law.

**COMMENT**

Drawn from *State v. Serrano*, 8th Dist. Cuyahoga No. 102583, 2016-Ohio-4691; *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501.

5. **THREAT.** OJI-CR 417.35.

6. **COMMUNICATION OF THREAT.** The unlawful threat of harm need not have been communicated directly to the person threatened, but the state must prove that (1) the threat was in fact communicated by the defendant to the person threatened, or (2) the defendant was aware that the threats would be communicated to the intended victim by a third person, or (3) the defendant could reasonably have expected that the threat would be conveyed to the intended victim by a third person.

**COMMENT**

*State v. Welch*, 6th Dist. Wood No. WD-07-057, 2008-Ohio-6540.

7. **PUBLIC SERVANT.** R.C. 2921.01.

8. **PARTY OFFICIAL.** “Party official” means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

**COMMENT**

R.C. 2921.01.

9. **CONCLUSION.** OJI-CR 425.01.

10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.11 Perjury R.C. 2921.11**

**COMMENT**

For the quantum of evidence necessary to sustain a conviction for perjury, see R.C. 2921.11(E) and *State v. Goodin* (1979), 56 Ohio St.2d 438, 10 O.O.3d 533, 384 N.E.2d 290.

1. The defendant is charged with perjury. Before you can find the defendant guilty, you must find beyond a reasonable doubt, that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant, in an official proceeding, knowingly

*(Use appropriate alternative[s])*

(A) made a material, false statement under oath or affirmation.

*(or)*

(B) swore or affirmed the truth of a material, false statement previously made.

2. MATERIAL STATEMENT. A false statement is material if it can affect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial or that the oath or affirmation was administered or taken in an irregular manner.

**COMMENT**

Drawn from R.C. 2921.11(B) and (C). A statement may be material regardless of its admissibility into evidence.

3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

4. OFFICIAL PROCEEDING. R.C. 2921.01(D).

5. CONTRADICTORY STATEMENTS. If you find that contradictory statements relating to the same material fact(s) were made by the defendant, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false.

**COMMENT**

Drawn from R.C. 2921.11(D).

6. CONCLUSION. OJI-CR 425.01.



7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.12 Tampering with evidence R.C. 2921.12**

1. The defendant is charged with tampering with evidence. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant, knowing that an official (proceeding) (investigation) was (in progress) (about to be instituted) (likely to be instituted)

*(Use appropriate alternative[s])*

(A)(1) (altered) (destroyed) (concealed) (removed) a (record) (document) (thing) with purpose to impair its value or availability as evidence in the (proceeding) (investigation).

*(or)*

(A)(2)(a) (made) (presented) (used) a (record) (document) (thing) knowing it was false and with purpose to mislead a public official who (was) (may have been) engaged in the (proceeding) (investigation).

*(or)*

(A)(2)(b) (made) (presented) (used) a (record) (document) (thing) knowing it was false and with purpose to corrupt the outcome of the (proceeding) (investigation).

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

4. OFFICIAL PROCEEDING. R.C. 2921.01(D).

5. PUBLIC OFFICIAL. "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges and law enforcement officers.

**COMMENT**

R.C. 2921.01(A).

6. ADDITIONAL FINDING:

PHYSICAL HARM. OJI-CR 425.21.

**COMMENT**

This additional finding applies only to offenses committed before 7/1/96.

7. CONCLUSION. OJI-CR 425.01.

8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.13 Falsification; in theft offense; to purchase firearm; to obtain concealed-handgun license; regarding a removal proceeding R.C. 2921.13 (offenses committed on and after 3/23/15) [Rev. 10/10/20]**

#### COMMENT

Ohio appellate courts have expressed differing views on whether an “exculpatory no” exception to R.C. 2921.13 exists. Under the “exculpatory no” doctrine, a criminal defendant cannot be found guilty of making a false statement if the statement was simply a false denial of guilt made by the defendant in response to an investigator’s question. *Compare In re Slusser*, 140 Ohio App.3d 480, 2000-Ohio-1734 (3d Dist.) (“Ohio’s falsification statute . . . admits of no exception for exculpatory statements made in response to an investigator’s questioning. . . . [and therefore,] the appellant could not avail himself of the ‘exculpatory no’ exception”) with *State v. Marshall*, 5th Dist. Fairfield No. 97CA52 (Feb. 25, 1998) (reversing a trial court’s failure to dismiss a falsification charge and explaining that “the ‘exculpatory no’ exception is available in Ohio”).

1. The defendant is charged with (falsification) (falsification in a theft offense) (falsification to purchase a firearm) (falsification to obtain a concealed-handgun license) (falsification regarding a removal proceeding). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly

(Use appropriate alternative[s])

(A) (made a false statement) ([swore] [affirmed] the truth of a false statement previously made) when the statement was

(Use appropriate alternative[s])

(1) made in an official proceeding;

(or)

(2) made with purpose to incriminate another;

(or)

(3) made with purpose to mislead a public official in performing his/her official function.

#### COMMENT

An unsworn oral statement to a public official with purpose to mislead, hamper,



or impede investigation of a crime is a violation of R.C. 2921.13(A)(3). *See State v. Lazzaro*, 76 Ohio St.3d 261, 1996-Ohio-397.

(or)

(4) made with purpose to secure the payment of (unemployment compensation) (Ohio Works First) (prevention, retention, and contingency benefits and services) (disability financial assistance) (retirement benefits or healthcare coverage from a state retirement system) (*describe economic development assistance as defined in R.C. 9.66*) (*describe other benefits administered by a governmental agency or paid out of a public treasury*);

(or)

(5) made with purpose to secure the issuance by a governmental agency of a (license) (permit) (authorization) (certificate) (registration) (release) (provider agreement);

(or)

(6) (sworn) (affirmed) before a (notary public) (*describe other person empowered to administer oaths*);

#### COMMENT

It is no defense to a charge under R.C. 2921.13(A)(6) that the oath or affirmation was administered or taken in an irregular manner. R.C. 2921.13(D).

(or)

(7) in writing on or in connection with a (report) (return) that is required or authorized by law;

(or)

(8) in writing, and was made with purpose to induce another to ([extend credit to] [employ] the defendant) (confer a [degree] [diploma] [certificate of attainment] [award of excellence] [honor] on the defendant) ([extend to] [bestow upon] the defendant [*describe other valuable benefit or distinction*]), when the person to whom the statement was directed relied upon it to his/her detriment;

(or)

(9) made with purpose to commit or (facilitate) (aid in) the commission of a theft offense;

#### COMMENT

The Court must instruct the jury on the elements of the applicable theft offense

as charged in the indictment, together with the meaning of pertinent words and phrases.

The Committee believes that the state must prove the culpable mental state of the underlying theft offense.

(or)

(10) knowingly made to a probate court in connection with any (action) (proceeding) (*describe other matter within the court's jurisdiction*), either orally or in a(n) (application) (petition) (complaint) (*describe other pleading*) (inventory) (account) (report) (*describe other written document*);

(or)

(11) made on a/an (account) (form) (record) (stamp) (label) (*describe other writing as required by law*);

(or)

(12) made in connection with the purchase of a firearm and in conjunction with the furnishing to the seller of the firearm of ([a fictitious] [an altered] driver's or commercial driver's license or permit) ([a fictitious] [an altered] identification card) (*describe other document that contains false information about the purchaser's identity*);

(or)

(13) made in a (document) (written instrument) that purports to be a (judgment) (lien) (claim of indebtedness) and is filed or recorded with (the secretary of state) (a county recorder) (the clerk of a court of record);

(or)

(14) made in an (application filed with a county sheriff in order to [obtain] [renew] a concealed-handgun license) (affidavit submitted to a county sheriff to obtain a concealed-handgun license on a temporary emergency basis);

(or)

(15) required under Ohio law in connection with the defendant's purchase of (cigarettes) (tobacco products) in a delivery sale.

#### COMMENT

Whether a statement is required under R.C. 5743.71 is a matter of law for the court to decide.

(or)

(B) furnished to the seller, in connection with the purchase of a firearm, ([a fictitious] [an altered] driver's or commercial driver's license or permit) ([a fictitious] [an



altered] identification card) (*describe other document that contains false information about the purchaser's identity*);

(or)

(C) in an attempt to obtain a concealed handgun license under Ohio law, presented to a sheriff (a fictitious) (an altered) document that purported to be certification of the defendant's competence in handling a handgun.

**COMMENT**

The competency-certification process for handling a handgun is described in R.C. 2923.125(B)(3). The court may want to explain the particular provision of that statute that applies to the facts in the defendant's case.

2. **CONTRADICTORY STATEMENTS (ADDITIONAL).** Evidence was presented that the defendant made (contradictory) (conflicting) statements relating to the same fact. It is not necessary for the state to prove which statement was false, but only that one or the other was false.

**COMMENT**

Drawn from R.C. 2921.13(E). This instruction should be given only if the court determines that the contradictory statements were made within the statute of limitations for falsification.

3. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).

4. **PURPOSELY.** OJI-CR 417.01; R.C. 2901.22(A).

5. **SWEAR; AFFIRM.** "Swear" and "affirm" have the same meaning, which is to declare solemnly that statements made or to be made are true.

6. **OATH; AFFIRMATION.** "Oath" and "affirmation" have the same meaning, which is any form of (pledge) (promise) to tell the truth.

**COMMENT**

Drawn from R.C. 3.20.

7. **OFFICIAL PROCEEDING.** R.C. 2921.01.

8. **INCRIMINATE ANOTHER.** "Incriminate another" means to furnish proof of an element or a link in a chain of evidence necessary to convict another of a crime.

**COMMENT**

Drawn from *State v. Jenkins*, 15 Ohio St.3d 164 (1984).

9. **PUBLIC OFFICIAL.** "Public official" means any elected or appointed officer; or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

**COMMENT**

R.C. 2921.01.

10. **TOBACCO PRODUCT.** "Tobacco product" means any product made from tobacco, other than cigarettes, that is made for smoking or chewing, or both, and snuff.

**COMMENT**

R.C. 5743.01.

11. **DELIVERY SALE.** "Delivery sale" means the taxable sale of tangible personal property that is received by a (consumer) (donee designated by a consumer) in a taxing jurisdiction that is not the taxing jurisdiction in which the vendor has a fixed place of business.

**COMMENT**

R.C. 5739.033.

12. **FIREARM.** "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm and any firearm which is inoperable, but which can be readily rendered operable.

**COMMENT**

R.C. 2923.11.

13. **CAPABLE OF EXPELLING OR PROPELLING.** R.C. 2923.11.

14. **DEADLY WEAPON.** "Deadly weapon" means any instrument, device, or thing



capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11.

**15. ADDITIONAL FINDING:**

(A) VALUE AND SPECIAL PROPERTY. OJI-CR 425.23; R.C. 2921.13(E)(2).

**16. CONCLUSION. OJI-CR 425.01.****17. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****18. GENERAL VERDICT FORM. OJI-CR 425.33.****19. ADDITIONAL FINDING VERDICT FORM.****COMMENT**

The Committee believes that the following verdict form satisfies *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256. This additional finding verdict form is limited to cases involving a violation of R.C. 2921.13(A)(9).

We, the jury, having found the defendant guilty of falsification in a theft offense, further find beyond a reasonable doubt that the value of the (property) (services) stolen was \*

\* Insert in ink

*(Use appropriate alternative)*

(1) "less than \$1,000"

*(or)*

(2) "\$1,000 or more and less than \$7,500"

*(or)*

(3) "\$7,500 or more and less than \$150,000"

*(or)*

(4) "\$150,000 or more"

**COMMENT**

It is not necessary for the jury to return an exact value. It is sufficient if the finding is expressed as a monetary range required to determine the degree of offense. R.C. 2913.61.

**CR 521.14 Making or causing a false report of child abuse or neglect R.C. 2921.14**

1. The defendant is charged with making or causing a false report of child abuse or child neglect. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant knowingly (made) (caused another person to make) a false report to (*describe agency or official specified in R.C. 2151.421(B)*), alleging that any person had committed an act or omission that resulted in the child being (an abused child) (a neglected child).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. CAUSATION. OJI-CR 417.23.
4. AGENCY OR OFFICIAL SPECIFIED IN R.C. 2151.421(B).

**COMMENT**

The jury must be instructed as to the definition of the applicable agency or official specified in R.C. 2151.421(B).

5. ABUSED CHILD. R.C. 2151.031.
6. NEGLECTED CHILD. R.C. 2151.03.
7. CONCLUSION. OJI-CR 425.01.
8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.17 Restrictions on present or former public officials or employees R.C. 102.03 (offenses committed on and after 9/29/17) [Rev. 1/30/21]**

**COMMENT**

R.C. 102.08(A) provides immunity from prosecution for certain violations of R.C. 102.03 when the defendant reasonably relied on an appropriate ethics commission advisory opinion. The Committee believes that disputes arising under R.C. 102.08(A) are questions of law for the court to decide and not an affirmative defense.

1. The defendant is charged with violating a restriction on a (present) (former) public (official) (employee). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant  
(*Use appropriate alternative*)



(A)(1) was a (public [official] [employee]) (former public [official] [employee]), and, (during his/her public [employment] [service]) (within twelve months after his/her public [employment] [service]), the defendant (represented a client) (acted in a representative capacity for a person) on any matter in which the defendant personally participated as a public (official) (employee) through (decision) (approval) (disapproval) (recommendation) (the rendering of advice) (investigation) (*describe other substantial exercise of administrative discretion*).

(or)

(A)(2) was a former (commissioner) (attorney examiner) of the Public Utilities Commission and, within twenty-four months after the conclusion of his/her service, the defendant (represented a public utility) (acted in a representative capacity on behalf of a public utility) before any state (board) (commission) (agency).

(or)

(A)(3) was a former public (official) (employee) who personally participated as a public (official) (employee) through (decision) (approval) (disapproval) (recommendation) (the rendering of advice) (the development or adoption of solid waste management plans) (investigation) (inspection) (*describe other substantial exercise of administrative discretion under R.C. Chapter 343 or R.C. Chapter 3734*), and, within twenty-four months after the conclusion of his/her (employment) (service), the defendant represented a person who was (the owner or operator of) (an applicant for a permit or license for) a facility on any matter in which the defendant personally participated as a public (official) (employee).

(or)

(A)(4) was a former (member) (employee) of the Ohio General Assembly and, within one year after the conclusion of his/her (employment) (service) with the General Assembly, the defendant (represented) (acted in a representative capacity for) any person on any matter before (the General Assembly) (any committee of the General Assembly) (the Controlling Board).

#### COMMENT

R.C. 102.03(A)(4) does not apply to or affect a person who separated from service with the General Assembly on or before 12/31/95.

(or)

#### COMMENT

Paragraphs (A)(5), (A)(6), and (A)(7) are intentionally omitted because the instruction numbering mirrors the statutory numbering of the criminal offenses.

(A)(8) was a public (official) (employee) of a state agency and, (during his/her public employment) (within twelve months after his/her public employment), the defendant (represented) (acted in a representative capacity for) a new state agency on any (audit) (investigation) pertaining to his/her new state agency in which the defendant personally participated at his/her former state agency through (decision) (approval) (disapproval) (recommendation) (the rendering of advice) (investigation) (*describe other substantial exercise of administrative discretion*).

(or)

#### COMMENT

Paragraph (A)(9) is intentionally omitted because the instruction numbering mirrors the statutory numbering of the criminal offenses.

(A)(10) was a/an

(*Use appropriate alternative*)

(a) (Ohio Casino Control Commission official) (former Ohio Casino Control Commission official), and, (during his/her public service) (within two years after his/her public service), he/she (was [employed] [compensated] by a person regulated by the commission) (acted in a representative capacity for any person on any matter before or concerning the commission);

(or)

(b) (Ohio Casino Control Commission employee) (former Ohio Casino Control Commission employee), and, (during his/her public employment) (within two years after his/her public employment), he/she (represented a client) (acted in a representative capacity on any matter in which he/she personally participated as a commission employee through (decision) (approval) (disapproval) (recommendation) (the rendering of advice) (investigation) (*describe other substantial exercise of administrative discretion*)).

(or)

#### COMMENT

Although the express language of R.C. 102.03(B) does not specify a mens rea, the default mens rea of recklessness applies as a result of the application of R.C. 2901.21. *See State v. Towns*, 6th Dist. Williams No. WM-19-023, 2020-Ohio-5120.

(B) was a (public [official] [employee]) (former public [official] [employee]) and recklessly (disclosed) (used), without appropriate authorization, information acquired by him/her in the course of his/her official duties that (was confidential because of statutory provisions) (had been clearly designated to him/her as



confidential when that confidential designation was warranted because of the [status of the proceedings] [circumstances under which the information was received] and preserving its confidentiality was necessary to the proper conduct of government business).

(or)

(C)(1) was a public (official) (employee) and participated in non-ministerial functions within the scope of his/her official duties in a (license) (rate-making) proceeding that directly affected the (license) (rates) of any (person) (partnership) (trust) (business trust) (corporation) (association) in which the (defendant) (defendant's immediate family) owned or controlled more than five percent.

(or)

(C)(2) was a public (official) (employee) and participated in non-ministerial functions within the scope of his/her official duties in a (license) (rate-making) proceeding that directly affected the (license) (rates) of any person to whom (the defendant) (the defendant's immediate family) (a/an [partnership] [trust] [business trust] [corporation] [association] of which the [defendant] [defendant's immediate family] owned or controlled more than five percent) had sold (goods) (services) totaling more than one thousand dollars during the preceding year, unless the defendant filed a written statement acknowledging that sale with the clerk or secretary of (*insert name of the public agency*) and the statement was entered in any public record of that agency's proceedings.

(or)

(D) was a public (official) (employee) and (used) (authorized the use of) the (authority) (influence) of his/her (office) (employment) to secure (anything of value) (the [promise] [offer] of anything of value) that was of such a character as to manifest a substantial and improper influence upon him/her with respect to his/her duties.

#### COMMENT

R.C. 102.03(H)(1) provides that the prohibition set forth in R.C. 102.03(D) does not prohibit a public official or employee who is required to file a financial disclosure statement under R.C. 102.02 from accepting, and does not prohibit a person from giving to that public official or employee, the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in R.C. 3345.011, pays membership dues.

(or)

(E) was a public (official) (employee) and (solicited) (accepted) anything of value that was of such character as to manifest a substantial and improper influence upon him/her with respect to his/her duties.

**COMMENT**

R.C. 102.03(H)(1) provides that the prohibition set forth in R.C. 102.03(E) does not prohibit a public official or employee who is required to file a financial disclosure statement under R.C. 102.02 from accepting, and does not prohibit a person from giving to that public official or employee, the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in R.C. 3345.011, pays membership dues.

(or)

(F) (promised) (gave) to a public (official) (employee) anything of value that was of such a character as to manifest a substantial and improper influence upon that public (official) (employee) with respect to his/her duties.

**COMMENT**

R.C. 102.03(H)(1) provides that the prohibition set forth in R.C. 102.03(F) does not prohibit a public official or employee who is required to file a financial disclosure statement under R.C. 102.02 from accepting, and does not prohibit a person from giving to that public official or employee, the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in R.C. 3345.011, pays membership dues.

(or)

**COMMENT**

Paragraph (G) is intentionally omitted because the instruction numbering mirrors the statutory numbering of the criminal offenses.

(H)(1) (was a public [official] [employee] who was required to file a financial



disclosure statement under Ohio law and [solicited] [accepted] an honorarium) (gave an honorarium to a public [official] [employee] who was required to file a financial disclosure statement under Ohio law).

#### COMMENT

“Under Ohio law” means pursuant to R.C. 102.02. If there is a factual issue as to whether the individual was required to file a financial disclosure statement under R.C. 102.02, the trial judge should draft instructions accordingly.

R.C. 102.03(H)(1) provides that a public official or employee who was required to file a financial disclosure statement under Ohio law does not include the president, other chief administrative officer, or a member of a board of trustees of a state institution of higher education as defined in R.C. 3345.011.

R.C. 102.03(H)(1) provides that the prohibition set forth in R.C. 102.03(H)(1) does not prohibit a public official or employee who is required to file a financial disclosure statement under R.C. 102.02 from accepting, and does not prohibit a person from giving to that public official or employee, the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in R.C. 3345.011, pays membership dues.

(or)

(H)(2) (was a/an [member of the board of a state retirement system] [state retirement system investment officer] [employee of a state retirement system] whose position involved substantial and material exercise of discretion in the investment of retirement system funds and [solicited] [accepted]) (gave to a/an [member of the board of a state retirement system] [state retirement system investment officer] [employee of a state retirement system] whose position involved substantial and material exercise of discretion in the investment of retirement system funds) payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

(or)

#### COMMENT

Paragraphs (I), (J), and (K) are intentionally omitted because the instruction numbering mirrors the statutory numbering of the criminal offenses.

(L)(1) was a public (official) (employee) with a casino gaming regulatory function and (indirectly invested, by way of an entity in which he/she had [an ownership

interest] [control]) (directly invested) in a (casino operator) (management company) (holding company) (casino facility gaming-related vendor). The state must also prove beyond a reasonable doubt that the defendant was not engaged in permitted passive investing.

**COMMENT**

R.C. 102.02(L) does not prohibit or limit permitted passive investing by a public official or employee.

(or)

(L)(2) was a public (official) (employee) with a casino gaming regulatory function and (directly) (indirectly) had a financial interest in, had an ownership interest in, was the creditor or held a debt instrument issued by, or had an interest in a contractual or service relationship with a (casino operator) (management company) (holding company) (casino facility) (gaming-related vendor). The state must also prove beyond a reasonable doubt that the defendant was not engaged in permitted passive investing.

**COMMENT**

R.C. 102.02(L) does not prohibit or limit permitted passive investing by a public official or employee.

(or)

(M) was (a member) (the executive director) (an employee) of the Ohio Casino Control Commission and

*(Use appropriate alternative[s])*

(1) accepted anything of value, including but not limited to a gift, gratuity, emolument, or employment from a/an (casino operator) (management company) (person subject to the jurisdiction of the Commission) ([officer] [attorney] [agent] [employee] of a [casino operator] [management company] [person subject to the jurisdiction of the Commission]);

(or)

(2) (solicited) (suggested) (requested) (recommended) to a/an (casino operator) (management company) (person subject to the jurisdiction of the Commission) ([officer] [attorney] [agent] [employee] of a [casino operator] [management company] [person subject to the jurisdiction of the Commission]) the appointment of a person to (an office) (a place) (a position) (employment);

(or)



(3) participated in (casino gaming) (*identify other amusement if activity at a casino facility*) while (in Ohio) (at an affiliated gaming facility of an Ohio licensed casino operator).

2. **MEMBERSHIP IN ORGANIZATION (ADDITIONAL).** The membership of a public (official) (employee) in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on the public (official) (employee) with respect to that person's duties. "Organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under the Internal Revenue Code of 1986. This instruction does not apply to a public (official) (employee) who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. A public (official) (employee) who is a member of an organization is not allowed to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use the public (official's) (employee's) official position with regard to the interests of the organization on the matter if the public (official) (employee) has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, (pecuniary) (financial) interests.

**COMMENT**

Drawn from R.C. 102.03(J). This instruction applies only to alleged violations of R.C. 102.03(D), (E), and (F).

3. **RECKLESSLY.** OJI-CR 417.17; R.C. 2901.22(C).
4. **PUBLIC OFFICIAL OR EMPLOYEE.** R.C. 102.01.
5. **PUBLIC AGENCY.** R.C. 102.01.
6. **PUBLIC UTILITY.** R.C. 102.03(A)(2), R.C. 4905.02.
7. **FACILITY.** R.C. 102.03(A)(3), R.C. 3734.01.
8. **PERSON.**

(A) "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

**COMMENT**

R.C. 1.59.

(B) "Person" does not include any state agency or political subdivision of Ohio.

**COMMENT**

Drawn from R.C. 102.03(A)(4). This instruction applies to the term “person” only as it is used in R.C. 102.03(A)(4).

9. **REPRESENT.** “Represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

**COMMENT**

Drawn from R.C. 102.03(A)(5). This instruction applies to the term “represent” only as it is used in R.C. 102.03(A).

10. **MATTER.**

(A) “Matter” includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments.

**COMMENT**

Drawn from R.C. 102.03(A)(5). This instruction applies to the term “matter” only as it is used in R.C. 102.03(A)(1), (2), and (3).

(B) “Matter” includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments.

**COMMENT**

Drawn from R.C. 102.03(A)(5). This instruction applies to the term “matter” only as it is used in R.C. 102.03(A)(4).

11. **ANYTHING OF VALUE.** R.C. 102.01, R.C. 1.03, R.C. 3517.01.

12. **MINISTERIAL FUNCTIONS.** “Ministerial functions” include, but are not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

**COMMENT**

Drawn from R.C. 102.03(A)(7).



13. **POLITICAL SUBDIVISION.** “Political subdivision” means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

**COMMENT**

Drawn from R.C. 102.03(A)(9). This instruction applies to the term “political subdivision” only as it is used in R.C. 102.03(A).

14. **IMMEDIATE FAMILY.** “Immediate family” means a spouse residing in the person’s household and any dependent child.

**COMMENT**

R.C. 102.01.

15. **HONORARIUM.** R.C. 102.01.

16. **CASINO OPERATOR.** R.C. 103.02(L), R.C. 3772.01.

17. **HOLDING COMPANY.** R.C. 103.02(L), R.C. 3772.01.

18. **MANAGEMENT COMPANY.** R.C. 103.02(L), R.C. 3772.01.

19. **CASINO FACILITY.** R.C. 103.02(L), R.C. 3772.01; Section 6(C)(9) of Article XV, Ohio Constitution.

20. **GAMING-RELATED VENDOR.** R.C. 103.02(L), R.C. 3772.01.

21. **PASSIVE INVESTING.** “Passive Investing” means investment by the public official or employee by means of a mutual fund in which the public official or employee has no control of the investments or investment decisions.

**COMMENT**

R.C. 102.03(L).

22. **AFFIRMATIVE DEFENSE:**

(A) OJI-CR 417.27.

(B) **APPOINTED ASSISTANT OR EMPLOYEE.** R.C. 102.03(K).

**COMMENT**

R.C. 102.03(K) creates an exception to the prohibitions of R.C. 102.03. The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the

nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

(C) DEFINITION.

(1) CHIEF LEGAL OFFICER. "Chief legal officer" means a city director of law, village solicitor, or similar chief legal officer of a municipal corporation.

COMMENT

R.C. 102.03(K), R.C. 733.621.

23. ADDITIONAL FINDINGS:

(A) SPECIAL PROPERTY. OJI-CR 425.23; R.C. 2909.07(C).

(B) SPECIAL FINDINGS. OJI-CR 425.25; R.C. 2909.07(C).

24. CONCLUSION. OJI-CR 425.01.

25. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

26. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.21 Compounding a crime R.C. 2921.21**

1. The defendant is charged with compounding a crime. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant knowingly (demanded) (accepted) (agreed to accept) anything of value in consideration of (abandoning) (agreeing to abandon) a pending criminal prosecution.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. AFFIRMATIVE DEFENSE.

(A) GENERAL. OJI-CR 417.27.

(B) CLAIMED RESTITUTION. R.C. 2921.21(B).

The defendant claims that he/she was the victim in a pending prosecution for (theft) (passing bad checks) (misuse of credit cards) (insurance fraud), and that the thing of value (demanded) (accepted) (agreed to be accepted) in consideration of (abandoning) (agreeing to abandon) the prosecution did not exceed an amount which the defendant reasonably believed due him/her as restitution for the loss caused him by the offense.

4. RESTITUTION. "Restitution" means reimbursement for a loss.

5. CONCLUSION. OJI-CR 425.01.

6. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.



7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.22(A) Failure to report a crime: a felony or the unauthorized use of computer, cable, or telecommunication property R.C.**

**2921.22(A) (offenses committed on and after 4/7/09) [Rev. 10/10/20]**

**COMMENT**

R.C. 2921.22(G) creates exceptions to the prohibitions of R.C. 2921.22(A) and (D). The Committee believes that the determination of whether these exceptions apply is not a jury question and that no instructions as to these exceptions are necessary.

1. The defendant is charged with failure to report a crime. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant

*(Use appropriate alternative)*

(A)(1) knew that a/an (*insert felony offense*) (had been) (was being) committed and knowingly failed to report that information to law-enforcement authorities.

*(or)*

(A)(2) (knew that the offense of unauthorized use of computer, cable, or telecommunication property [had been] [was being] committed) (had received information derived from the offense of unauthorized use of computer, cable, or telecommunication property) and knowingly failed to report the offense to law-enforcement authorities.

2. **FELONY.** To prove that the defendant knew that (*insert felony offense*) (had been) (was being) committed, the prosecution must prove beyond a reasonable doubt that the defendant actually knew that (*describe facts constituting each element of the felony*).

**COMMENT**

Drawn from R.C. 2901.02(C), (D), and (E).

3. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).

4. **REPORT.** "Report" includes both notifying law-enforcement officials and setting in motion events that will result in notification to those officials.

**COMMENT**

Drawn from *In Re Stichtenoth*, 67 Ohio App.2d 108 (1st Dist.1980).

**5. LAW-ENFORCEMENT AUTHORITIES. R.C. 2901.01.****COMMENT**

The Committee believes that the term “law-enforcement authorities” has the same meaning as “law-enforcement officer” as defined in R.C. 2901.01.

**6. UNAUTHORIZED USE OF COMPUTER, CABLE, OR TELECOMMUNICATION PROPERTY. R.C. 2913.04(B).****7. CONCLUSION. OJI-CR 425.01.****8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 521.22(B) Failure to report a crime: gunshot/stab wound R.C. 2921.22(B) (offenses committed on and after 4/6/17) [Rev. 10/10/20]**

1. The defendant is charged with failure to report a crime. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant was a person giving aid to a sick or injured person, and the defendant negligently failed to report to law-enforcement authorities (a [gunshot] [stab] wound treated or observed by him/her) (any serious physical harm to a person that the defendant knew or had reasonable cause to believe had resulted from an offense of violence).

2. **PERSON GIVING AID TO A SICK OR INJURED PERSON.** A “person giving aid to a sick or injured person” is a person who is helping an individual achieve treatment for an illness or injury, even though the person giving aid may not be directly involved in rendering medical treatment.

**COMMENT**

Drawn from *Morgan v. Community Health Partners Regional Med. Ctr.*, 9th Dist. Lorain No. 12CA010242, 2013-Ohio-2259.

**3. NEGLIGENTLY. OJI-CR 417.19; R.C. 2901.22(D).**

4. **REPORT.** “Report” includes both notifying law-enforcement officials and setting in motion events that will result in notification to those officials.



**COMMENT**

Drawn from *In Re Stichtenoth*, 67 Ohio App.2d 108 (1st Dist.1980).

**5. LAW-ENFORCEMENT AUTHORITIES. R.C. 2901.01.****COMMENT**

The Committee believes that the term “law-enforcement authorities” has the same meaning as “law-enforcement officer” as defined in R.C. 2901.01.

**6. SERIOUS PHYSICAL HARM. R.C. 2901.01.****7. REASONABLE CAUSE TO BELIEVE. OJI-CR 417.37.****8. OFFENSE OF VIOLENCE. R.C. 2901.01.****9. CONCLUSION. OJI-CR 425.01.****10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 521.22(C) Failure to report knowledge of a death R.C. 2921.22(C)  
(offenses committed on and after 4/6/17) [Rev. 10/10/20]****COMMENT**

The Committee believes that the absence of a culpable mental state in R.C. 2921.22(C) indicates a legislative intent to impose strict liability. See R.C. 2901.21(B).

1. The defendant is charged with failure to report knowledge of a death. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant (discovered the body) (was the first to know of the death) of (insert name of deceased) and failed to report the death immediately to ([a physician] [an advanced-practice registered nurse] whom the defendant knew was treating the deceased for a condition from which death at such time might be expected) (a law-enforcement officer) (an ambulance service) (an emergency squad) (the coroner in [insert name of political subdivision where the body was discovered, the death was believed to have occurred, or knowledge concerning the death was obtained])).

2. **REPORT.** “Report” includes both notifying and setting in motion events that will result in notification to (insert appropriate person or entity).

**COMMENT**

Drawn from *In Re Stichtenoth*, 67 Ohio App.2d 108 (1st Dist.1980).

3. PHYSICIAN. R.C. 4723.01.
4. ADVANCED-PRACTICE REGISTERED NURSE. R.C. 4723.01.

**COMMENT**

An advanced-practice registered nurse does not include a certified registered nurse anesthetist. R.C. 2921.22(C).

5. LAW-ENFORCEMENT OFFICER. R.C. 2901.01.
6. CONCLUSION. OJI-CR 425.01.
7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.22(D) Failure to report knowledge of a death R.C. 2921.22(D)**  
**(offenses committed on and after 3/18/97)**

**COMMENT**

R.C. 2921.22(G) creates exceptions to the prohibitions of R.C. 2921.22(A) and (D). The Committee believes that the determination of whether these exceptions are applicable is not a jury question and no instructions as to these exceptions are necessary.

The Committee believes that the absence of a culpable mental state in R.C. 2921.22(D) indicates a legislative intent to impose strict liability. See R.C. 2901.21(B).

1. The defendant is charged with failure to report knowledge of a death. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant failed to provide upon request of (the person to whom a report of a death had been made as required by law) (a law enforcement officer who had reasonable cause to assert the authority to investigate the circumstances surrounding the death) any facts within his/her knowledge that may have had a bearing on the investigation of the death.



## COMMENT

The Committee believes that the intent of the statute is that there is no violation unless a request has been made of the defendant by either the person to whom the defendant made the report or an investigating law enforcement officer.

2. REPORT REQUIRED BY LAW. OJI-CR 521.22(C); R.C. 2921.22(C).
3. LAW ENFORCEMENT OFFICER. R.C. 2901.01(A)(11).
4. CONCLUSION. OJI-CR 425.01.
5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.22(E) Failure to report a burn injury R.C. 2921.22(E) (offenses committed on and after 4/6/17) [Rev. 10/10/20]**

1. The defendant is charged with failure to report a burn injury. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was

(Use appropriate alternative[s])

(E)(2) a (physician) (nurse) (physician assistant) (limited practitioner) and, outside a (hospital) (sanitarium) (*describe other medical facility*), attended or treated a person who had sustained a burn injury (inflicted by an explosion or other incendiary device) (that showed evidence of having been inflicted in a violent, malicious, or criminal manner) and failed to report the burn injury immediately to the local (arson bureau) (fire-and-explosion-investigation bureau) (law-enforcement authorities);

(or)

(E)(3) a (manager) (superintendent) (*describe other person in charge*) of a (hospital) (sanitarium) (*describe other medical facility*) in which (*insert name of the injured person*) was attended or treated for any burn injury (inflicted by an explosion or other incendiary device) (that showed evidence of having been inflicted in a violent, malicious, or criminal manner) and failed to report the burn injury immediately to the local (arson bureau) (fire-and-explosion-investigation bureau) (law-enforcement authorities).

(or)

(E)(4) (*describe an accused under either [E][2] or [E][3] above*) and failed to file, within three working days after attending or treating a victim, a written report of the burn injury with the office of the State Fire Marshal on a form provided by that office.

2. ADDITIONAL ELEMENT. If you find that the defendant failed to (report) (or file a written report of) a burn injury, you must also decide whether the defendant acted knowingly or negligently.

**COMMENT**

Because the level of the offense is based on the defendant's culpable mental state, the jury should be instructed to decide whether the offense was committed knowingly or negligently. R.C. 2921.22(K).

3. **PHYSICIAN.** R.C. 4723.01.

4. **NURSE.** A nurse includes an advanced-practice registered nurse, a registered nurse, and a licensed practical nurse.

**COMMENT**

R.C. 2921.22(L).

5. **PHYSICIAN ASSISTANT.** A "physician assistant" is a person authorized to practice as a physician assistant in accordance with a license issued by the state medical board under Ohio law.

**COMMENT**

Drawn from R.C. 4730.12.

6. **LIMITED PRACTITIONER.** A "limited practitioner" is a person authorized to practice a limited branch of medicine in accordance with a license issued by the state medical board under Ohio law.

**COMMENT**

Drawn from R.C. 4731.17.

7. **BURN INJURY.** R.C. 2921.22(E)(1).

8. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).

9. **NEGLIGENTLY.** OJI-CR 417.11; R.C. 2901.22(D).

10. **INCENDIARY DEVICE.** "Incendiary device" means any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agency and a means to ignite it.



**COMMENT**

R.C. 2923.11.

11. PHYSICAL HARM TO PERSONS. R.C. 2901.01.
12. PHYSICAL HARM TO PROPERTY. R.C. 2901.01.
13. LAW-ENFORCEMENT AUTHORITIES. R.C. 2901.01.

**COMMENT**

The Committee believes that the term “law-enforcement authorities” has the same meaning as “law-enforcement officer” as defined in R.C. 2901.01(A)(11).

14. CONCLUSION. OJI-CR 425.01.
15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.
16. CONCLUSION WITH SPECIAL VERDICT FORM. We, the jury, having found the state proved beyond a reasonable doubt the defendant failed to report a burn injury, further find the state proved beyond a reasonable doubt that the defendant acted \*

\*Insert in ink.

*(Use appropriate alternative)*

(A) knowingly

*(or)*

(B) negligently

**COMMENT**

Because the level of the offense is based on the defendant’s culpable mental state, the jury should be instructed to decide whether the offense was committed knowingly or negligently. R.C. 2921.22(K).

**CR 521.24 Disclosure of confidential information R.C. 2921.24 (offenses committed on and after 3/30/07) [Rev. 11/7/20]**

**COMMENT**

R.C. 2921.24(B) and (C) create exceptions to the prohibitions of R.C. 2921.24(A).

The Committee believes that the determination of whether these exceptions apply is not a jury question, and no instructions as to these exceptions are necessary.

1. The defendant is charged with disclosure of confidential information. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was an (officer) (employee) of (*describe the law-enforcement agency, the court, or the office of a clerk of court*) and disclosed during the pendency of a criminal case the home address of a/an (peace officer) (parole officer) (prosecuting attorney) (assistant prosecuting attorney) (correctional employee) (youth-services employee) who was (a witness) (an arresting officer) in the case.

2. PEACE OFFICER. R.C. 2935.01.

3. PAROLE OFFICER. "Parole officer" is a person employed by the Ohio Adult Parole Authority who supervises offenders or conducts investigations.

**COMMENT**

Drawn from Ohio Adm.Code 5120-12-01(E)(18).

4. CORRECTIONAL EMPLOYEE. R.C. 149.43.

5. YOUTH-SERVICES EMPLOYEE. R.C. 149.43.

6. WITNESS. "Witness" means any person who has or claims to have knowledge concerning a fact or facts about the issue(s) involved in a proceeding.

**COMMENT**

Drawn from R.C. 2921.04(E).

7. CONCLUSION. OJI-CR 425.01.

8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.31 Obstructing official business R.C. 2921.31 [Rev. 11/7/20]**

1. The defendant is charged with obstructing official business. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, without privilege to do so and with purpose to (prevent) (obstruct) (delay) the performance by a public official of any authorized act within his/her official capacity, did an act that (hampered) (impeded) the public official in the performance of his/her lawful duties.



**COMMENT**

The defendant must have engaged in one or more affirmative or overt acts or undertakings that hamper or impede a public official in the performance of the official's lawful duties. A mere failure or refusal to respond to an officer's request does not constitute obstructing official business. *State v. Folley*, 2d Dist. Montgomery No. 24221, 2011-Ohio-4539; *State v. Body*, 2d Dist. Montgomery No. 27732, 2018-Ohio-3395.

2. **PRIVILEGE.** "Privilege" means an immunity, license, or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office, or relationship, or growing out of necessity.

**COMMENT**

R.C. 2901.01.

3. **PURPOSELY.** OJI-CR 417.01; R.C. 2901.22(A).

4. **PUBLIC OFFICIAL.** "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law-enforcement officers.

**COMMENT**

R.C. 2921.01.

5. **HAMPER OR IMPEDE.** To "hamper or impede" means to do some affirmative act that disrupts, hinders, or stops the progress of the public official.

**COMMENT**

Drawn from *State v. McLaughlin*, 2d Dist. Montgomery No. 26521, 2015-Ohio-4611; *State v. McCoy*, 2d Dist. Montgomery No. 22479, 2008-Ohio-5648.

There is no finite period of time that constitutes a stoppage. *State v. McLaughlin*, 2d Dist. Montgomery No. 26521, 2015-Ohio-4611. The state does not have to prove that the defendant caused the public official to fail in the official's duties, but only that the defendant disrupted the official's performance of that person's duties. *State v. McCoy*, 2d Dist. Montgomery No. 22479, 2008-Ohio-5648. The state must prove that the defendant did more than cause a minor delay, annoyance, irritation, or inconvenience to the public official. *Toledo v. Whiting*, 6th Dist. Lucas Nos. L-17-1113, L-17-1247, 2019-Ohio-56.

6. **LAWFUL DUTIES.** "Lawful duties" means any act or acts that a public official is required by law to perform or is permitted by law to perform in good faith.

**COMMENT**

Drawn from *State v. Lohaus*, 1st Dist. Hamilton No. C-020444, 2003-Ohio-777;  
*State v. Pembaur*, 9 Ohio St.3d 136 (1984).

7. **ADDITIONAL FINDING:** OJI-CR 425.25; R.C. 2921.21(B).

8. **RISK.** "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01.

9. **PHYSICAL HARM TO A PERSON.** R.C. 2901.01.

10. **CONCLUSION.** OJI-CR 425.01.

11. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 521.32(A) Obstructing justice, where the person aided by the defendant was an adult R.C. 2921.32 (offenses committed on and after 6/27/12) [Rev. 5/22/21]**

1. The defendant is charged with obstructing justice. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, with purpose to (hinder the [discovery] [apprehension] [prosecution] [conviction] [punishment] of another for) (assist another to benefit from the commission of) (*insert name of offense*)

(Use appropriate alternative[s])

(A)(1) (harbored) (concealed) that other person;

(or)

(A)(2) provided that other person with (money) (transportation) (a weapon) (a disguise) (*describe other means of avoiding discovery or apprehension*);

(or)

(A)(3) warned that other person of impending (discovery) (apprehension);

(or)



(A)(4)(a) (destroyed) (concealed) physical evidence of the crime;

(or)

(A)(4)(b) induced a person to (withhold [testimony] [information]) (elude legal process summoning him/her to [testify] [supply evidence]);

(or)

(A)(5) communicated false information to any person;

(or)

(A)(6) (prevented) (obstructed) [*insert name of another person*], by means of (force) (intimidation) (deception), from performing an act to aid in the (discovery) (apprehension) (prosecution) of the other person.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

3. LIMITED BURDEN OF PROOF. The state is not required to prove that the other person aided by the defendant was (apprehended for) (charged with) (convicted of) (pleaded guilty to) the crime that that other person committed.

#### COMMENT

R.C. 2921.32(B).

4. OFFENSE COMMITTED BY ANOTHER. To find that (*insert name of offense*) was committed by another person, you must find beyond a reasonable doubt that the other person (*describe the essential elements of that person's offense*).

#### COMMENT

While R.C. 2921.32(B) obviates the need for the prosecution to prove that the person aided by the defendant in an obstructing-justice case faced charges for an underlying crime, Ohio appellate courts have expressed differing views about whether the prosecution must show that an underlying crime was in fact committed by that other person. Compare *State v. Mooney*, 5th Dist. Stark No. 2005-CA-00304, 2006-Ohio-6014 (“Obstructing justice involves commission of an underlying crime by another, which must be proven by means of evidence going beyond the mere statement or allegation that a crime was committed”) and *State v. Kolvek*, 9th Dist. Summit No. 21752, 2004-Ohio-3706 (same) with *State v. Smith*, 12th Dist. Butler No. CA2009-02-038, 2010-Ohio-1721 (“declin[ing] to follow the Fifth and Ninth Appellate Districts in requiring the state to prove beyond a reasonable doubt that the person aided committed the underlying crime”).

5. HARBOR. To “harbor” is to provide lodging, shelter, or refuge to a person.

**COMMENT**

Drawn from *State v. Blanton*, 3d Dist. Marion 9-15-07, 2015-Ohio-4620.

6. **FORCE.** “Force” means any violence, compulsion, effort, or constraint (exerted) (used) by any means upon or against a person or thing.

**COMMENT**

Drawn from *Garfield Heights v. Simpson*, 82 Ohio App.3d 286 (8th Dist.1992) (defining the term in a resisting-arrest case).

7. **INTIMIDATION.** “Intimidate” means to frighten, scare, or bully.

**COMMENT**

Drawn from *State v. Hodge*, 5th Dist. Fairfield No. 2019 CA 00035, 2020-Ohio-3002; *State v. Serrano*, 8th Dist. Cuyahoga No. 102583, 2016-Ohio-4691; and *State v. Roulette*, 4th Dist. Scioto No. 10CA3364, 2011-Ohio-6993.

8. **DECEPTION.** R.C. 2913.01.

9. **ADDITIONAL FINDINGS:**

**COMMENT**

The verdict forms must indicate the level of the offense committed by the other person because that information affects the level of the obstructing-justice offense. Depending on the underlying offense charged, the trial court may need to instruct the jury on the essential elements of underlying offense.

In the case of aggravated murder, murder, or a felony of the first or second degree, if the indictment alleges and the jury finds that the defendant knew or had reasonable cause to believe that the crime committed was one of those offenses, then obstructing justice is a felony of the third degree. If that knowledge or belief is not alleged or proved, however, then obstructing justice involving a felony offense is itself a felony of the fifth degree.

- (A) **SPECIAL CIRCUMSTANCES: ACT OF TERRORISM.** OJI-CR 425.25; R.C. 2921.32(C)(5).

If you find the defendant guilty of obstructing justice, you must also decide whether the prosecution has proven beyond a reasonable doubt that the crime committed by the person aided was an act of terrorism. (If you find that the



prosecution has met that burden, you must also decide whether the prosecution has proven beyond a reasonable doubt that the act of terrorism resulted in the death of a person who was not a participant in the act of terrorism.)

### COMMENT

The second sentence of this instruction should be given only if the prosecution alleges that the act of terrorism resulted in a death.

(B) SPECIAL CIRCUMSTANCES: TRAFFICKING IN PERSONS. OJI-CR 425.25; R.C. 2921.32(C)(6).

If you find the defendant guilty of obstructing justice, you must also decide whether the prosecution has proven beyond a reasonable doubt that the crime committed by the person aided was trafficking in persons.

(C) DEFINITIONS.

(1) ACT OF TERRORISM. R.C. 2909.21.

(2) TRAFFICKING IN PERSONS. R.C. 2905.32.

10. CONCLUSION. OJI-CR 425.01.

11. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.32(B) Obstructing justice, where the person aided by the defendant was a minor R.C. 2921.32 (offenses committed on and after 6/27/12) [Rev. 5/22/21]**

1. The defendant is charged with obstructing justice. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, with purpose to (hinder the [discovery of a child] [apprehension of a child] [prosecution of a child] [adjudication as a delinquent child] [disposition of a child] for) (assist a child to benefit from the commission of) an act that if committed by an adult would be (*insert name of offense*)

(*Use appropriate alternative[s]*)

(A)(1) (harbored) (concealed) that child;

(*or*)

(A)(2) provided that child with (money) (transportation) (a weapon) (a disguise) (*describe other means of avoiding discovery or apprehension*);

(*or*)

(A)(3) warned that child of impending (discovery) (apprehension);

(*or*)

(A)(4)(a) (destroyed) (concealed) physical evidence of the act;

(or)

(A)(4)(b) induced a person to (withhold [testimony] [information]) (elude legal process summoning him/her to [testify] [supply evidence]);

(or)

(A)(5) communicated false information to any person;

(or)

(A)(6) (prevented) (obstructed) [*insert name of another person*], by means of (force) (intimidation) (deception), from performing an act to aid in the (discovery) (apprehension) (prosecution) of the child.

2. CHILD. R.C. 2151.011.

3. DELINQUENT CHILD. R.C. 2152.02.

4. ADULT. "Adult" means an individual who is 18 years of age or older.

#### COMMENT

R.C. 2151.011.

5. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

6. LIMITED BURDEN OF PROOF. The state is not required to prove that the child aided by the defendant was (apprehended for) (charged with) (adjudicated a delinquent child for committing) the act that that child committed.

#### COMMENT

R.C. 2921.32(B).

7. THE ACT COMMITTED BY THE CHILD. To find that the child committed (*insert name of offense that would be a crime if committed by an adult*), you must find beyond a reasonable doubt that the child (*describe the essential elements of the child's act*).

#### COMMENT

While R.C. 2921.32(B) obviates the need for the prosecution to prove that the child aided by the defendant in an obstructing-justice case faced charges for an underlying act that would be a crime if committed by an adult, Ohio appellate courts have expressed differing views about whether the prosecution must show that an underlying criminal act was in fact committed by that child. Compare *State v.*



*Mooney*, 5th Dist. Stark No. 2005-CA-00304, 2006-Ohio-6014 (“Obstructing justice involves commission of an underlying crime by another, which must be proven by means of evidence going beyond the mere statement or allegation that a crime was committed”) and *State v. Kolvek*, 9th Dist. Summit No. 21752, 2004-Ohio-3706 (same) with *State v. Smith*, 12th Dist. Butler No. CA2009-02-038, 2010-Ohio-1721 (“declin[ing] to follow the Fifth and Ninth Appellate Districts in requiring the state to prove beyond a reasonable doubt that the person aided committed the underlying crime”).

8. HARBOR. To “harbor” is to provide lodging, shelter, or refuge to a person.

**COMMENT**

Drawn from *State v. Blanton*, 3d Dist. Marion No. 9-15-07, 2015-Ohio-4620.

9. FORCE. “Force” means any violence, compulsion, effort, or constraint (exerted) (used) by any means upon or against a person or thing.

**COMMENT**

Drawn from *Garfield Heights v. Simpson*, 82 Ohio App.3d 286 (8th Dist. 1992) (defining the term in a resisting-arrest case).

10. INTIMIDATION. “Intimidate” means to frighten, scare, or bully.

**COMMENT**

Drawn from *State v. Hodge*, 5th Dist. Fairfield No. 2019 CA 00035, 2020-Ohio-3002; *State v. Serrano*, 8th Dist. Cuyahoga No. 102583, 2016-Ohio-4691; and *State v. Roulette*, 4th Dist. Scioto No. 10CA3364, 2011-Ohio-6993.

11. DECEPTION. R.C. 2913.01.

12. ADDITIONAL FINDINGS:

**COMMENT**

The verdict forms must indicate the level of the offense committed by the child that would have been a crime if committed by an adult because that information affects the level of the obstructing-justice offense. Depending on the underlying offense charged, the trial court may need to instruct the jury on the essential elements of the child’s underlying offense.

In the case of aggravated murder, murder, or a felony of the first or second degree, if the indictment alleges and the jury finds that the defendant knew or had

reasonable cause to believe that the act committed by the child was one of those offenses, then obstructing justice is a felony of the third degree. If that knowledge or belief is not alleged or proved, however, then obstructing justice involving a felony offense is itself a felony of the fifth degree.

**(A) SPECIAL CIRCUMSTANCES: ACT OF TERRORISM. OJI-CR 425.25; R.C. 2921.32(C)(5).**

If you find the defendant guilty of obstructing justice, you must also decide whether the prosecution has proven beyond a reasonable doubt that the act committed by the child aided was an act of terrorism. (If you find that the prosecution has met that burden, you must also decide whether the prosecution has proven beyond a reasonable doubt that the act of terrorism resulted in the death of a person who was not a participant in the act of terrorism.)

**COMMENT**

The second sentence of this instruction should be given only if the prosecution alleges that the act of terrorism resulted in a death.

**(B) SPECIAL CIRCUMSTANCES: TRAFFICKING IN PERSONS. OJI-CR 425.25; R.C. 2921.32(C)(6).**

If you find the defendant guilty of obstructing justice, you must also decide whether the prosecution has proven beyond a reasonable doubt that the act committed by the child aided was trafficking in persons.

**(C) DEFINITIONS:**

(1) ACT OF TERRORISM. R.C. 2909.21.

(2) TRAFFICKING IN PERSONS. R.C. 2905.32.

**13. CONCLUSION. OJI-CR 425.01.**

**14. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.**

**CR 521.321(A) Assaulting a police dog or police horse R.C. 2921.321 [Rev. 5/22/21]**

1. The defendant is charged with assaulting a police (dog) (horse). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), the defendant knowingly (caused) (attempted to cause) physical harm to a police (dog) (horse), and

*(Use appropriate alternative[s])*

(A)(1) the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse), and the police (dog) (horse) was assisting a law-



enforcement officer in the performance of the officer's official duties at the time the physical harm was (caused) (attempted);

(or)

(A)(2) the defendant had actual knowledge that the (dog) (horse) was a police (dog) (horse), even though it was not assisting a law-enforcement officer in the performance of the officer's official duties at the time the physical harm was (caused) (attempted).

**COMMENT**

R.C. 2921.321(G) requires the prosecution to prove that the defendant knew or should have known at the time of the offense that the police dog or horse was in fact a police dog or horse.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. CAUSE. OJI-CR 417.23.
4. ATTEMPT. OJI-CR 523.02.
5. PHYSICAL HARM. "Physical harm" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2921.321(H)(1).

6. POLICE DOG OR HORSE. ("Police dog") ("Police horse") means a (dog) (horse) that has been trained, and may be used, to assist law-enforcement officers in the performance of their official duties.

**COMMENT**

R.C. 2921.321(H)(2).

7. SHOULD HAVE KNOWN. In deciding whether the defendant should have known at the time that the police (dog) (horse) was in fact a police (dog) (horse), you must put yourself in the position of the defendant with his/her knowledge or lack of knowledge and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of the persons involved and must decide whether their acts and words and all of the surrounding circumstances would have caused a person of ordinary alertness and care to know at the time that the (dog) (horse) was in fact a police (dog) (horse).

**COMMENT**

Drawn from OJI-CR 511.01(B) and OJI-CR 513.02.

8. LAW-ENFORCEMENT OFFICER. R.C. 2901.01.
9. AFFIRMATIVE DEFENSE. R.C. 2921.321(F); OJI-CR 417.27, OJI-CR 417.29.

**COMMENT**

R.C. 2921.321(F) creates an exception to the prohibition of R.C. 2921.321(A). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant.

The Committee believes that *Nucklos* should only apply when the defendant’s status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

10. ADDITIONAL FINDING: SPECIAL FINDINGS. OJI-CR 425.25; R.C. 2921.321(E).

**COMMENT**

A finding by the jury that the crime resulted in the death of the police dog or horse, serious physical harm to the police dog or horse other than death, or physical harm to the police dog or horse other than death or serious physical harm can elevate the level of the offense and can lead to certain mandatory consequences that



are explained in R.C. 2921.321(E)(1).

11. SERIOUS PHYSICAL HARM. R.C. 2921.321(H)(3).
12. CONCLUSION. OJI-CR 425.01.
13. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
14. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.321(B) Harassing a police dog or police horse R.C. 2921.321 [Rev. 5/22/21]**

1. The defendant is charged with harassing a police (dog) (horse). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), the defendant

*(Use appropriate alternative[s])*

(A) recklessly (taunted) (tormented) (struck) a police (dog) (horse), and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse);

*(or)*

(B) recklessly threw a/an (object) (substance) at a police (dog) (horse), and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse);

*(or)*

(C) recklessly [(interfered with) (obstructed) a police (dog) (horse)] [(interfered with) (obstructed) a law-enforcement officer who was being assisted by a police (dog) (horse)] in a manner that

*(Use appropriate alternative[s])*

(1) (inhibited) (restricted) the law-enforcement officer's control of the police (dog) (horse), and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse);

*(or)*

(2) deprived the law-enforcement officer of control of the police (dog) (horse), and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse);

*(or)*

(3) released the police (dog) (horse) from its area of control, and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse);

(or)

(4) entered the area of control of the police (dog) (horse) without the consent of the law-enforcement officer, including placing (food) (any [object] [substance]) into that area, and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse);

(or)

(5) (inhibited) (restricted) the ability of the police (dog) (horse) to assist a law-enforcement officer, and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse).

(D) recklessly engaged in conduct that was likely to cause (serious physical harm) (death) to a police (dog) (horse), and the defendant knew or should have known at the time that the (dog) (horse) was a police (dog) (horse).

(E) , who was the (owner) (keeper) (harborer) of a dog, recklessly failed to reasonably restrain the dog from (taunting) (tormenting) (chasing) (approaching in a/an [menacing fashion] [apparent attitude of attack]) (attempting to [bite] [endanger]) a police (dog) (horse) that (at the time was assisting a law-enforcement officer in the performance of the officer's duties, and the defendant should have known at the time that the police [dog] [horse] was in fact a police [dog] [horse]) (the defendant knew was a police [dog] [horse]).

#### COMMENT

R.C. 2921.321(G) requires the prosecution to prove that the defendant knew or should have known at the time of the offense that the police dog or horse was in fact a police dog or horse.

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

3. POLICE DOG OR HORSE. ("Police dog") ("Police horse") means a (dog) (horse) that has been trained, and may be used, to assist law-enforcement officers in the performance of their official duties.

#### COMMENT

R.C. 2921.321(H)(2).

4. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

5. SHOULD HAVE KNOWN. In deciding whether the defendant should have known at the time that the police (dog) (horse) was in fact a police (dog) (horse), you must put yourself in the position of this defendant with his/her knowledge or lack of knowledge and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of the persons involved and must decide whether their acts



and words and all of the surrounding circumstances would have caused a person of ordinary alertness and care to know at the time that the (dog) (horse) was in fact a police (dog) (horse).

**COMMENT**

Drawn from OJI-CR 511.01(B) and OJI-CR 513.02.

**6. LAW-ENFORCEMENT OFFICER. R.C. 2901.01.**

**7. CONSENT.** Consent may be either express or implied. Express consent is determined from the written or spoken words of the persons involved. Implied consent is determined from the facts and circumstances that surround those involved, including their words and actions, from which you may infer that consent was given to the defendant.

**COMMENT**

Drawn from *State v. Moning*, 1st Dist. Hamilton No. C-010315, 2002-Ohio-5097.

**8. CAUSE. OJI-CR 417.23.****9. SERIOUS PHYSICAL HARM. R.C. 2921.321(H)(3).**

**10. PHYSICAL HARM.** “Physical harm” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2921.321(H)(1).

**11. AFFIRMATIVE DEFENSE. R.C. 2921.321(F); OJI-CR 417.27, OJI-CR 417.29.****COMMENT**

R.C. 2921.321(F) creates an exception to the prohibition of R.C. 2921.321(B). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional

of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant.

The Committee believes that *Nucklos* should only apply when the defendant’s status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

12. ADDITIONAL FINDING: SPECIAL FINDINGS. OJI-CR 425.25; R.C. 2921.321(E).

**COMMENT**

A finding by the jury that the crime resulted in the death of the police dog or horse, serious physical harm other than death to the police dog or horse, or physical harm other than death or serious physical harm to the police dog or horse can elevate the level of the offense as explained in R.C. 2921.321(E)(2).

13. CONCLUSION. OJI-CR 425.01.

14. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.321(C) Assaulting an assistance dog R.C. 2921.321 [Rev. 5/22/21]**

1. The defendant is charged with assaulting an assistance dog. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), the defendant knowingly (caused) (attempted to cause) physical harm to an assistance dog, and

(Use appropriate alternative[s])

(A) the defendant knew or should have known at the time that the dog was an assistance dog, and the dog was (assisting) (serving) a (blind) (deaf) (hearing-impaired) (mobility-impaired) person at the time the physical harm was (caused) (attempted);

(or)



(B) the defendant had actual knowledge that the dog was an assistance dog, even though it was not (assisting) (serving) a (blind) (deaf) (hearing-impaired) (mobility-impaired) person at the time the physical harm was (caused) (attempted).

**COMMENT**

R.C. 2921.321(G) requires the prosecution to prove that the defendant knew or should have known at the time of the offense that the dog was in fact an assistance dog.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. CAUSE. OJI-CR 417.23.
4. ATTEMPT. OJI-CR 523.02.
5. PHYSICAL HARM. "Physical harm" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2921.321(H)(1).

6. ASSISTANCE DOG. "Assistance dog" means a guide dog, hearing dog, or service dog that has been trained by a nonprofit special agency.

**COMMENT**

R.C. 2921.321(H)(4).

7. GUIDE DOG. "Guide dog" means a dog that has been trained or is in training to assist a blind person.

**COMMENT**

R.C. 955.011.

8. BLIND PERSON. R.C. 955.011(B)(2).
9. HEARING DOG. "Hearing dog" means a dog that has been trained or is in training to assist a deaf or hearing-impaired person.

**COMMENT**

R.C. 955.011(B)(5).

10. **HEARING-IMPAIRED PERSON.** A “hearing-impaired person” means a loss of hearing in one or both ears in the frequency region important for speech recognition and comprehension.

**COMMENT**

Drawn from R.C. 3701.503(F).

11. **SERVICE DOG.** “Service dog” means a dog that has been trained or is in training to assist a mobility-impaired person.

**COMMENT**

R.C. 955.011(B)(6).

12. **MOBILITY-IMPAIRED PERSON.** R.C. 955.011(B)(1).

13. **NONPROFIT SPECIAL AGENCY.** “Nonprofit special agency” means an organization engaged in the training of any type of assistance dogs.

**COMMENT**

Drawn from R.C. 955.16.

14. **SHOULD HAVE KNOWN.** In deciding whether the defendant should have known at the time that the dog was in fact an assistance dog, you must put yourself in the position of this defendant with his/her knowledge or lack of knowledge and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of the persons involved and must decide whether their acts and words and all of the surrounding circumstances would have caused a person of ordinary alertness and care to know at the time that the dog was in fact an assistance dog.

**COMMENT**

Drawn from OJI-CR 511.01(B) and OJI-CR 513.02.

15. **AFFIRMATIVE DEFENSE.** R.C. 2921.321(F); OJI-CR 417.27, OJI-CR 417.29.

**COMMENT**

R.C. 2921.321(F) creates an exception to the prohibition of R.C. 2921.321(C).



The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant.

The Committee believes that *Nucklos* should only apply when the defendant’s status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

16. **ADDITIONAL FINDING: SPECIAL FINDINGS.** OJI-CR 425.25; R.C. 2921.321(E).

**COMMENT**

A finding by the jury that the crime resulted in the death of the assistance dog, serious physical harm to the assistance dog other than death, or physical harm to the assistance dog other than death or serious physical harm can elevate the level of the offense as explained in R.C. 2921.321(E)(3).

17. **SERIOUS PHYSICAL HARM.** R.C. 2921.321(H)(3).

18. **CONCLUSION.** OJI-CR 425.01.

19. **CONCLUSION WITH AFFIRMATIVE DEFENSE.** OJI-CR 425.03.

20. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 521.321(D) Harassing an assistance dog R.C. 2921.321 [Rev. 5/22/21]**

1. The defendant is charged with harassing an assistance dog. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), the defendant

*(Use appropriate alternative[s])*

(A) recklessly (taunted) (tormented) (struck) an assistance dog, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(B) recklessly threw a/an (object) (substance) at an assistance dog, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(C) recklessly [(interfered with) (obstructed) an assistance dog] [(interfered with) (obstructed) a (blind) (deaf) (hearing-impaired) (mobility-impaired) person who was being assisted by an assistance dog] in a manner that

*(Use appropriate alternative[s])*

(1) (inhibited) (restricted) the (assisted) (served) person's control of the dog, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(2) deprived the (assisted) (served) person of control of the dog, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(3) released the dog from its area of control, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(4) entered the area of control of the dog without the consent of the (assisted) (served) person, including placing (food) (any [object] [substance]) into that area, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(5) (inhibited) (restricted) the ability of the dog to assist the (assisted) (served) person, and the defendant knew or should have known at the time that the dog was an assistance dog.

(D) recklessly engaged in conduct that was likely to cause (serious physical harm) (death) to an assistance dog, and the defendant knew or should have known at the time that the dog was an assistance dog;

*(or)*

(E) , who was the (owner) (keeper) (harbinger) of a dog, recklessly failed to reasonably restrain the dog from (taunting) (tormenting) (chasing) (approaching in a/an [menacing fashion] [apparent attitude of attack]) (attempting to [bite] [endanger]) an assistance dog that (at the time was [assisting] [serving] a [blind] [deaf]



[hearing-impaired] [mobility-impaired] person, and the defendant should have known at the time that the assistance dog was in fact an assistance dog) (the defendant knew was an assistance dog).

**COMMENT**

R.C. 2921.321(G) requires the prosecution to prove that the defendant knew or should have known at the time of the offense that the assistance dog was in fact an assistance dog.

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
3. ASSISTANCE DOG. “Assistance dog” means a guide dog, hearing dog, or service dog that has been trained by a nonprofit special agency.

**COMMENT**

R.C. 2921.321(H)(4).

4. GUIDE DOG. “Guide dog” means a dog that has been trained or is in training to assist a blind person.

**COMMENT**

Drawn from R.C. 955.011(B)(4).

5. BLIND PERSON. R.C. 955.011(B)(2).
6. HEARING DOG. “Hearing dog” means a dog that has been trained or is in training to assist a deaf or hearing-impaired person.

**COMMENT**

R.C. 955.011(B)(5).

7. HEARING-IMPAIRED PERSON. A “hearing-impaired person” means a loss of hearing in one or both ears in the frequency region important for speech recognition and comprehension.

**COMMENT**

Drawn from R.C. 3701.503(F).

8. **SERVICE DOG.** "Service dog" means a dog that has been trained or is in training to assist a mobility-impaired person.

**COMMENT**

R.C. 955.011(B)(6).

9. **MOBILITY-IMPAIRED PERSON.** R.C. 955.011(B)(1).

10. **NONPROFIT SPECIAL AGENCY.** "Nonprofit special agency" means an organization engaged in the training of any type of assistance dogs.

**COMMENT**

Drawn from R.C. 955.16.

11. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).

12. **SHOULD HAVE KNOWN.** In deciding whether the defendant should have known at the time that the assistance dog was in fact an assistance dog, you must put yourself in the position of this defendant with his/her knowledge or lack of knowledge and under the circumstances and conditions that surrounded him/her at the time. You must consider the conduct of the persons involved and must decide whether their acts and words and all of the surrounding circumstances would have caused a person of ordinary alertness and care to know at the time that the dog was in fact an assistance dog.

**COMMENT**

Drawn from OJI-CR 511.01(B) and OJI-CR 513.02.

13. **CONSENT.** Consent may be either express or implied. Express consent is determined from the written or spoken words of the persons involved. Implied consent is determined from the facts and circumstances that surround those involved, including their words and actions, from which you may infer that consent was given to the defendant.

**COMMENT**

Drawn from *State v. Moning*, 1st Dist. Hamilton No. C-010315, 2002-Ohio-5097.

14. **CAUSE.** OJI-CR 417.23.

15. **SERIOUS PHYSICAL HARM.** R.C. 2921.321(H)(3).



16. **PHYSICAL HARM.** “Physical harm” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2921.321(H)(1).

17. **AFFIRMATIVE DEFENSE.** R.C. 2921.321(F); OJI-CR 417.27, OJI-CR 417.29.

**COMMENT**

R.C. 2921.321(F) creates an exception to the prohibition of R.C. 2921.321(D). The Committee believes this is an affirmative defense under R.C. 2901.05(D) or in the nature of an affirmative defense and must be treated as such. *See State v. Little*, 8th Dist. Cuyahoga No. 57033 (Mar. 14, 1991); *State v. Hassell*, 1st Dist. Hamilton No. C-920530 (May 5, 1993).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that “R.C. 2925.03(B) (1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to the defendant.

The Committee believes that *Nucklos* should only apply when the defendant’s status or circumstances suggest potential application of an exemption or exception. Compare *State v. Durbin*, 9th Dist. Summit No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is always an element of the offense that the state must prove beyond a reasonable doubt, with *Miamisburg v. Hanson*, 2d Dist. Montgomery No. 26582, 2016-Ohio-964, which disagrees with the holding in *Durbin*.

18. **ADDITIONAL FINDING: SPECIAL FINDINGS.** OJI-CR 425.25; R.C. 2921.321(E).

**COMMENT**

A finding by the jury that the crime resulted in the death of the assistance dog, serious physical harm to the assistance dog other than death, or physical harm to the assistance dog other than death or serious physical harm can elevate the level of the

offense as explained in R.C. 2921.321(E)(4).

19. CONCLUSION. OJI-CR 425.01.
20. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
21. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.33 Resisting arrest R.C. 2921.33 (offenses committed on and after 9/16/97) [Rev. 5/22/21]**

**COMMENT**

Resisting arrest may be committed either recklessly or by force. If it is committed by force, no culpable mental state need be proven. *See City of Columbus v. Harbuck*, 10th Dist. Franklin No. 99AP-1420 (Nov. 30, 2000) (“resisting arrest by force is a strict liability offense”); *City of Findlay v. Clark*, 3d Dist. Hancock No. 5-95-8 (Feb. 12, 1996) (“the language clearly imposes strict liability upon an individual who resists a lawful arrest by force”).

1. The defendant is charged with resisting arrest. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant

(*Use appropriate alternative[s]*)

(A) (recklessly) (by force) resisted or interfered with a lawful arrest of (himself/herself) (another);

(*or*)

(B) (recklessly) (by force) resisted or interfered with a lawful arrest of (himself/herself) (another), and (during the course) (as a result) of the resistance or interference, caused physical harm to a law-enforcement officer;

(*or*)

(C) (recklessly) (by force) resisted or interfered with a lawful arrest of (himself/herself) (another), and (during the course) (as a result) of the resistance or interference, (recklessly caused physical harm to a law-enforcement officer by means of a deadly weapon) (brandished a deadly weapon).

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
3. FORCE. “Force” means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

**COMMENT**

R.C. 2901.01.



4. **RESIST OR INTERFERE.** “Resist or interfere” means to oppose, obstruct, hinder, impede, interrupt, or prevent an arrest by a law-enforcement officer by the use of force or recklessly by any means, such as going limp, or any other passive or indirect conduct.

**COMMENT**

Drawn from *State v. Burns*, 5th Dist. Coshocton No. 2013CA0005, 2013-Ohio-4498 (“an accused’s avoidance of apprehension constitutes resisting arrest”); *State v. Bay*, 130 Ohio App.3d 772 (1st Dist.1998) (“going limp constitutes resisting or interfering”); *State v. Williams*, 84 Ohio App.3d 129 (12th Dist.1992) (a person who “fled into a nearby wooded area, ignoring the deputy’s commands to stop,” and who “failed to follow the deputy’s instructions to place his hands on his head and walk backwards to the deputy” resisted arrest).

5. **ARREST.** “Arrest” means

- (A) an intent to arrest;
- (B) under real or pretended authority;
- (C) accompanied by the (actual) (constructive) seizure or detention of the person; and
- (D) which is so understood by the person arrested.

The state must prove that the arrest was in the process of taking place when the resistance or interference occurred. The state must also prove that the defendant understood that he/she was under arrest.

**COMMENT**

Drawn from *State v. Curtin*, 11th Dist. Ashtabula No. 2020-A-0010, 2020-Ohio-4189 (“a formal arrest is not necessarily an instantaneous event,” and the “initial handcuffing and detention of a defendant does not mean the arrest for the purposes of resisting arrest has already been completed”); *State v. Turic*, 2d Dist. Greene No. 2010 CA 56, 2011-Ohio-6713 (a defendant’s “refusal to allow” an officer to “search her for weapons so that she could be transported to the police station” after she was placed in handcuffs was sufficient to support her resisting-arrest conviction); *City of Columbus v. Obasohan*, 175 Ohio App.3d 391, 2008-Ohio-797 (10th Dist.) (holding that the prosecution “was required to demonstrate beyond a reasonable doubt that” the defendant “understood that she was under arrest before she resisted that arrest”).

6. **LAWFUL ARREST.** You must also decide whether the arrest was lawful.

(Use appropriate alternative)

- (A) **WARRANTLESS ARREST.** An arrest is lawful if

- (1) the offense for which the arrest was being made was one for which the defendant could be arrested; and

#### COMMENT

Drawn from *State v. Battle*, 5th Dist. Morgan No. 09 AP 0001, 2010-Ohio-4327 (“the State must prove both that there was a reasonable basis to believe that an offense was committed, and that the offense was one for which the defendant could be lawfully arrested”); *State v. Thompson*, 116 Ohio App.3d 740 (1st Dist.1996) (“the state must prove not only that there was a reasonable basis to believe an offense was committed, but also that the offense was one for which the defendant could be lawfully arrested”).

The trial judge should consider giving appropriate additional instructions about the relevant arrestable offense. For example, if the defendant was being arrested for the crime of assault, the trial judge might want to explain as follows: “You are instructed as a matter of law that an assault is an offense for which the defendant could be arrested.”

- (2) the arresting officer had authority to make the arrest at the time and place where the alleged resistance or interference took place; and

#### COMMENT

Drawn from *State v. Craig*, 7th Dist. Columbiana No. 18 CO 0040, 2019-Ohio-4962 (“a police officer possesses the power of arrest outside of that officer’s jurisdiction only if all three provisions of R.C. 2935.03(D) apply”); *State v. O’Neill*, 3d Dist. Allen No. 1-14-21, 2015-Ohio-815 (“As a general rule, an officer may not make a warrantless arrest for a misdemeanor unless the offense was committed in the officer’s presence”).

The trial judge should consider giving appropriate additional instructions about the arresting officer’s authority to make the arrest at the time or place in question. R.C. 2935.03 and R.C. 2935.26 authorizes a warrantless arrest.

- (3) a reasonable law-enforcement officer under the facts and circumstances in evidence would have believed that the following elements of (*insert underlying offense*) (were being) (had been) committed by the defendant: (*describe the essential elements of underlying offense*). (The state need not prove that the defendant [was in fact] [has been found] guilty of the offense, but only that [*insert name of arresting officer*] had a reasonable belief of the defendant’s guilt.)

#### COMMENT

Drawn from *State v. Boles*, 2d Dist. Montgomery No. 28704, 2020-Ohio-4485 (“Probable cause to arrest exists when a reasonably prudent person would believe



that the person to be arrested has committed a crime”); *State v. Parsons*, 11th Dist. Portage No. 2015-P-0084, 2016-Ohio-8109 (“the state need not prove that the defendant was guilty of the offense for which the arrest is made to uphold a subsequent conviction for resisting arrest”); *State v. Vactor*, 9th Dist. Lorain No. 02CA008068, 2003-Ohio-7195 (“The state need not prove that the defendant was in fact guilty of the offense for which the arrest was based when proving the element of lawful arrest”); *State v. Barker*, 128 Ohio App.3d 233 (6th Dist.1998) (“an arrest is lawful if the officer had probable cause to believe that a crime was committed by the defendant, even if the defendant is ultimately found not guilty of the crime”); *State v. Maynard*, 110 Ohio App.3d 6 (4th Dist.1996) (“for the arrest to be a lawful arrest, there must be probable cause for the arrest”).

(or)

(B) ARREST WITH A WARRANT. An arrest is lawful if

(1) it was made after an arrest warrant had been issued for the person arrested; and

#### COMMENT

Drawn from *State v. Mendell*, 191 Ohio App.3d 325, 2010-Ohio-6107 (2d Dist.) (“a warrant must be issued prior to an arrest in order for the arrest to be valid under that warrant”); *State v. Harris*, 8th Dist. Cuyahoga No. 85270, 2005-Ohio-2192 (“the discovery that defendant had a warrant for his arrest clearly provided probable cause for defendant’s arrest”). Note that the court in *City of Strongsville v. Waiwood*, 62 Ohio App.3d 521 (8th Dist.1989), held that “a defective arrest warrant may render an arrest illegal regardless of the reasonableness of police conduct.”

(2) the arresting officer had authority to make the arrest at the time and place where the alleged resistance or interference took place.

#### COMMENT

Drawn from *State v. Martin*, 151 Ohio St.3d 470, 2017-Ohio-7556 (“an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within” but “an arrest warrant does not authorize police to enter the premises of a third party to arrest the subject of the warrant unless an exception to the [search] warrant requirement justifies entry”).

The trial judge should consider giving appropriate additional instructions about the arresting officer’s authority to make the arrest at the time or place in question.

7. CAUSATION. OJI-CR 417.23, OJI-CR 417.25.

8. PHYSICAL HARM TO A LAW-ENFORCEMENT OFFICER. “Physical harm to a law-enforcement officer” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

Drawn from R.C. 2901.01.

**9. LAW-ENFORCEMENT OFFICER. R.C. 2901.01.**

**10. DEADLY WEAPON.** “Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

**COMMENT**

R.C. 2923.11.

**11. BRANDISH.** “Brandish” means to wave or exhibit in a menacing or challenging way.

**COMMENT**

Drawn from *State v. Hills*, 8th Dist. Cuyahoga No. 98848, 2013-Ohio-2902.

**12. AFFIRMATIVE DEFENSE:**

**(A) GENERAL. OJI-CR 417.27.**

**(B) EXCESSIVE OR UNNECESSARY FORCE.**

The defendant claims that (*insert name of arresting officer[s]*) used excessive or unnecessary force in arresting (him/her) (*insert name of other person*). “Excessive or unnecessary force” means more force than necessary under the circumstances to arrest the (defendant) (*insert name of other person*).

When considering whether the defendant has proved that the arresting officer[s] used excessive or unnecessary force, you should consider the totality of the circumstances, and your analysis should be guided by three factors: (1) the severity of the crime for which the arrest was being made, (2) whether the defendant posed an immediate threat to the safety of the officer[s] or others, and (3) the scope of any efforts by the defendant to actively resist the arrest or to attempt to evade the arrest by flight.

The arresting (officer’s) (officers’) actions should be judged from the perspective of a reasonable officer on the scene at the moment when any force was used, rather than with the 20/20 vision of hindsight.

**COMMENT**

Drawn from *Black v. Hicks*, 8th Dist. Cuyahoga No. 108958, 2020-Ohio-3976;



*Wright v. City of Euclid*, 962 F.3d 852 (6th Cir.2020); *Kisela v. Hughes*, 138 S. Ct. 1148 (2018).

Excessive force is an affirmative defense to a charge of resisting arrest. *See Hayward v. Cleveland Clinic Found.*, 759 F.3d 601 (6th Cir.2014) (“a lawful arrest cannot occur if the arresting officer has used excessive force,” and “a criminal conviction for resisting arrest in Ohio cannot stand where a criminal defendant successfully asserts the affirmative defense of pre-arrest excessive force”); *Mansfield v. Studer*, 5th Dist. Richland Nos. 2011-CA-93 and 2011-CA-94, 2012-Ohio-4840 (“excessive force is an affirmative defense to resisting arrest”).

13. CONCLUSION. OJI-CR 425.01.

14. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

15. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.331 Failure to comply with an order or signal of a police officer R.C. 2921.331 [Rev. 10/9/21]**

1. The defendant is charged with failure to comply with an order or signal of a police officer. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

(Use appropriate alternative)

(A) recklessly failed to comply with any lawful (order) (direction) of a police officer invested with authority to (direct) (control) (regulate) traffic.

**COMMENT**

R.C. 2921.331(A) is not a strict-liability statute, and recklessness is an essential element of the offense. *City of Cleveland v. Krebs*, 8th Dist. Cuyahoga No. 105814, 2018-Ohio-746; *State v. Brewer*, 96 Ohio App.3d 413 (2d Dist. 1994).

(or)

(B) operated a motor vehicle so as willfully to elude or flee a police officer after receiving a/an (visible) (audible) signal from a police officer to bring his/her motor vehicle to a stop.

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

3. LAWFUL ORDER OR DIRECTION. A “lawful (order) (direction)” is one that a reasonable police officer under the facts and circumstances in evidence would have believed was both necessary and permissible for the officer to give, and the officer must have had the authority to (direct) (control) (regulate) traffic.

**COMMENT**

Drawn from *State v. Thigpen*, 8th Dist. Cuyahoga No. 102467, 2016-Ohio-1374.

Ohio appellate courts have reached different conclusions about whether the officer's order or direction must have concerned the defendant's operation of a motor vehicle, and they have also disagreed about whether the order or direction must have been made in the context of enforcing a traffic law.

In the Second District, the court of appeals has said repeatedly that a lawful order or direction is one that involves the defendant's act or omission in operating a motor vehicle. *See State v. Armstrong-Carter*, 2nd Dist. Montgomery Nos. 28571 and 28576, 2021-Ohio-1110; *State v. Redd*, 2nd Dist. Montgomery No. 20284, 2004-Ohio-4689.

Other Ohio appellate courts, however, have found that a police officer's order or direction can be lawful—and that R.C. 2921.331(A) can be violated—even if the order or direction was not focused on the defendant's operation of a vehicle and perhaps even where the order had nothing to do with the regulation of traffic. *See State v. Davis*, 4th Dist. Ross No. 00CA2566, 2001-Ohio-2428 (the statute was violated where a vehicle occupant failed to comply with an order to roll down a window and step out of the vehicle); *State v. Ratliff*, 5th Dist. Perry No. 08-CA-5, 2008-Ohio-6717 (the statute was violated where a pedestrian failed to comply with an order to stop); *State v. Thigpen*, 8th Dist. Cuyahoga No. 102467, 2016-Ohio-1374 (the statute was violated where the defendant failed to comply with an order that he come out from hiding and show his hands); *State v. Wagenknecht*, 9th Dist. Wayne No. 2864 (June 29, 1994) (the statute was violated where a vehicle occupant tried to walk away during a traffic stop after being told to stay at the scene).

4. **POLICE OFFICER.** "Police officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

**COMMENT**

R.C. 4511.01.

5. **INVESTED WITH AUTHORITY.** "Invested with authority" means that the officer was entitled to issue the (order) (direction). Only uniformed police officers can issue traffic orders or directions. Any police officer enforcing motor-vehicle laws while using a motor vehicle must use a vehicle marked in a distinctive manner or color indicating that the vehicle is a law-enforcement vehicle, and that vehicle must be equipped with at least one flashing, oscillating, or rotating colored light mounted outside and on top of the vehicle. Police officers in plain clothes or unmarked cars cannot enforce traffic laws.



**COMMENT**

Drawn from R.C. 4549.13 and *State v. Thigpen*, 8th Dist. Cuyahoga No. 102467, 2016-Ohio-1374.

**6. MOTOR VEHICLE. R.C. 4501.01.**

**7. WILLFULLY.** A person acts “willfully” when it is his/her specific intention to cause a particular result. To do an act willfully is to do it intentionally as opposed to accidentally, carelessly, or unintentionally. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to elude or flee.

**COMMENT**

Drawn from R.C. 2901.22(A) and *Anderson v. Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711.

**8. ADDITIONAL FINDINGS:**

**(A) FLEEING AFTER COMMISSION OF FELONY.** R.C. 2921.331(B) and (C)(4). If your verdict is guilty, you must decide whether the state has proved beyond a reasonable doubt that the defendant, when committing the failure-to-comply offense, was fleeing immediately after committing (*identify felony*). The state must have proved beyond a reasonable doubt that the defendant (*describe essential elements of the felony*).

**COMMENT**

The judge should instruct the jury on the elements of the applicable felony, together with the meaning of pertinent words and phrases.

**(B) CAUSED SERIOUS PHYSICAL HARM OR SUBSTANTIAL RISK.** R.C. 2921.331(B) and (C)(5). If your verdict is guilty, you must decide whether the state has proved beyond a reasonable doubt that the defendant’s operation of the motor vehicle (was a proximate cause) (caused a substantial risk) of serious physical harm to (persons) (property).

**COMMENT**

This offense-level enhancement does not require the prosecution to prove that the defendant acted with any particular culpability. See *State v. Fairbanks*, 117 Ohio St.3d 543, 2008-Ohio-1470 (“Because the General Assembly specified the culpable

mental state of willfulness in R.C. 2921.331(B), but excluded mention of any mental state in the accompanying enhancement provision, R.C. 2921.331(C)(5)(a)(ii), this omission plainly indicates a purpose to impose strict criminal liability with respect to that provision”).

(C) PROXIMATE CAUSE. OJI-CR 417.23.

(D) SERIOUS PHYSICAL HARM TO PERSONS. R.C. 2901.01(A)(5).

(E) SERIOUS PHYSICAL HARM TO PROPERTY. R.C. 2901.01(A)(6).

(F) SUBSTANTIAL RISK. “Substantial risk” means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a (certain) (particular) result may occur or that (certain) (particular) circumstances may exist.

**COMMENT**

Drawn from R.C. 2901.01.

9. CONCLUSION. OJI-CR 425.01.

10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.34(A)(1) Escape R.C. 2921.34(A)(1) (offenses committed before 9/30/11) [Rev. 12-10-11]**

1. The defendant is charged with escape. Before you can find the defendant guilty, you must find beyond a reasonable doubt, that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, knowing he/she was under detention or being reckless in that regard, purposely

*(Use appropriate alternative)*

(broke) (attempted to break) such detention.

*(or)*

failed to return to detention (following temporary leave granted for a [specific purpose] [limited period]) (at the time required when serving a sentence in intermittent confinement).

**COMMENT**

In *State v. Jansen* (Dec. 5, 1997), 1997 Ohio App. LEXIS 5455, the court held that a person who is confined to a work release facility, who is released to go to work, but who fails to go to work and then returns to the facility when scheduled to return, is guilty of escape. That conduct constitutes “a purposeful failure to return



to a detention following a temporary leave granted for a specific purpose.”

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
4. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
5. DETENTION. R.C. 2921.01(E).

#### COMMENT

The statutory definition of “detention” was amended on July 1, 1996, Oct. 1, 1996, and July 1, 1997. The judge should consider the provisions of the statute in existence at the time the offense was committed.

6. ARREST. OJI-CR 521.33 § 5.
7. DETENTION FACILITY. R.C. 2921.01(F).
8. AFFIRMATIVE DEFENSES.
  - (A) GENERAL. OJI-CR 417.27.
  - (B) IRREGULARITY OR LACK OF JURISDICTION. R.C. 2921.34(B).

#### COMMENT

The Committee believes that the determination of whether the detention was pursuant to a judicial order or in a detention facility is a question of law for the court to decide. The Committee further believes that in the case of any other detention, the questions of irregularity in bringing about or maintaining the detention and of lack of jurisdiction of the detaining authority are also questions of law for the court to decide. If the court decides that there was irregularity or lack of jurisdiction, then the jury must be instructed as follows:

The defendant claims that

*(Use appropriate alternative)*

(1) the escape involved no substantial risk of harm to the person or property of another.

*(or)*

(2) the detaining authority knew or should have known that there was no legal basis or authority for the detention.

(C) PHYSICAL HARM TO PERSONS. “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(C).

(D) PHYSICAL HARM TO PROPERTY. R.C. 2901.01(D).

(E) SUBSTANTIAL RISK. "Substantial risk" means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

**COMMENT**

R.C. 2901.01(A)(8).

(F) NECESSITY OR DURESS.

**COMMENT**

Ohio recognizes the common law affirmative defense of necessity or duress, although it is not set forth in the statute. The following instructions on the defense are drawn from *State v. Cross* (1979), 58 Ohio St.2d 482, 483, fn.3, and *State v. Harkness* (1991), 75 Ohio App.3d 7, 11.

The defendant claims that

he/she was faced with a specific threat of (death) (forcible sexual attack) (substantial bodily injury) (substantial health impairment) in the immediate future; and

there was (no time for complaint to the authorities) (a history of futile complaints or complete inaction which made any result from such complaints illusory); and

there was no time or opportunity to resort to the courts; and

there was no evidence of force or violence used toward prison personnel or other innocent persons in the escape; and the defendant reported to the authorities when he attained a position of safety from the immediate threat.

9. ADDITIONAL FINDING:

UNDERLYING OFFENSE. OJI-CR 425.25; R.C. 2921.34(C).

10. CONCLUSION. OJI-CR 425.01.

11. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03; R.C. 2921.34(B).



12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.34(A)(1) Escape R.C. 2921.34(A)(1) (offenses committed on and after 9/30/11) [Rev. 12-10-11]**

1. The defendant is charged with escape. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, knowing he/she was under (detention other than supervised release detention) (supervised release detention) or being reckless in that regard, purposely

(*Use appropriate alternative*)

(A) (broke) (attempted to break) such detention.

(*or*)

(B) failed to return to (detention) (supervised release detention) (following temporary leave granted for a [specific purpose] [limited period]) (at the time required when serving a sentence in intermittent confinement).

**COMMENT**

In *State v. Jansen*, 6th Dist. No. L-96-041 (Dec. 5, 1997), the court held that a person who is confined to a work release facility and who is released to go to work, but who fails to go to work and then returns to the facility when scheduled to return, is guilty of escape. That conduct constitutes a purposeful failure to return to a detention following a temporary leave granted for a specific purpose.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).
4. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
5. DETENTION. R.C. 2921.01.

**COMMENT**

The statutory definition of detention was amended on 7/1/96, 10/1/96, and 7/1/97. The judge should consider the provisions of the statute in existence at the time the offense was committed.

6. ARREST. OJI-CR 521.33 § 5.
7. DETENTION FACILITY. R.C. 2921.01.
8. SUPERVISED RELEASE DETENTION. R.C. 2921.34(D).
9. AFFIRMATIVE DEFENSES.

(A) GENERAL. OJI-CR 417.27.

(B) IRREGULARITY OR LACK OF JURISDICTION. The defendant claims that

*(Use appropriate alternative)*

(1) the escape involved no substantial risk of harm to the person or property of another.

*(or)*

(2) the detaining authority knew or should have known that there was no legal basis or authority for the detention.

#### COMMENT

R.C. 2921.34(B).

The Committee believes that the determination of whether the detention was pursuant to a judicial order or in a detention facility is a question of law for the court to decide. The Committee further believes that in the case of any other detention, the questions of irregularity in bringing about or maintaining the detention and of lack of jurisdiction of the detaining authority are also questions of law for the court to decide. If the court decides that there was irregularity or lack of jurisdiction, then the jury must be instructed as such.

(C) PHYSICAL HARM TO PERSONS. Physical harm to persons means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

#### COMMENT

R.C. 2901.01.

(D) PHYSICAL HARM TO PROPERTY. R.C. 2901.01.

(E) SUBSTANTIAL RISK. Substantial risk means a strong possibility, as contrasted with a remote or (even a) significant possibility, that a certain result may occur or that certain circumstances may exist.

#### COMMENT

R.C. 2901.01.

(F) NECESSITY OR DURESS. The defendant claims that

(1) he/she was faced with a specific threat of (death) (forcible sexual attack) (substantial bodily injury) (substantial health impairment) in the immediate future;



(2) there was (no time for complaint to the authorities) (a history of futile complaints or complete inaction which made any result from such complaints illusory);

(3) there was no time or opportunity to resort to the courts; and

(4) there was no evidence of force or violence used toward prison personnel or other innocent persons in the escape; and the defendant reported to the authorities when he/she attained a position of safety from the immediate threat.

#### COMMENT

Ohio recognizes the common law affirmative defense of necessity or duress, although it is not set forth in the statute. The following instructions on the defense are drawn from *State v. Cross*, 58 Ohio St.2d 482 (1979), and *State v. Harkness*, 75 Ohio App.3d 7 (1991).

#### 10. ADDITIONAL FINDING:

(A) UNDERLYING OFFENSE. OJI-CR 425.25; R.C. 2921.34(C).

#### 11. CONCLUSION. OJI-CR 425.01.

#### 12. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03; R.C. 2921.34(B).

#### 13. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

#### **CR 521.34(A)(2) Escape R.C. 2921.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)**

1. The defendant is charged with escape. Before you can find the defendant guilty, you must find beyond a reasonable doubt, that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant was sentenced to prison as a sexually violent predator, and the requirement of prison was modified so as to release him/her from prison and restrict him/her to a geographic area, and knowing that he/she was under the geographic restriction or being reckless in that regard, the defendant purposely (left the geographic area to which the restriction applied) (failed to return to that geographic area following a temporary leave granted [for a specific purpose] [for a limited period of time]).

#### 2. SENTENCED AS A SEXUALLY VIOLENT PREDATOR. R.C. 2971.03.

#### COMMENT

If the evidence raises a factual issue about the defendant's sentence, appropriate instructions must be given to guide the jury, using appropriate statutory definitions.

## 3. MODIFICATION OF SENTENCE: GEOGRAPHICAL RESTRICTION.

**COMMENT**

If the evidence raises a factual issue about the modification of the sentence or the geographical area, appropriate instructions must be given to guide the jury.

4. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

5. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

6. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

7. ADDITIONAL FINDING:

UNDERLYING ADJUDICATION. OJI-CR 425.25; R.C. 2921.34(C).

8. CONCLUSION. OJI-CR 425.01.

9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.35(A) Aiding escape or resistance to lawful authority (conveyance of instrument or thing into detention facility) R.C. 2921.35(A)**

1. The defendant is charged with aiding escape or resistance to lawful authority. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant, with purpose to (promote) (facilitate) (aid in) (an escape) (resistance to lawful authority), (conveyed into a detention facility) (provided a person confined in a detention facility with) an instrument or thing which could be used for such purpose.

2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

3. ESCAPE. OJI-CR 521.34(A)(1); R.C. 2921.34(A)(1).

4. DETENTION FACILITY. R.C. 2921.01(F).

5. CONCLUSION. OJI-CR 425.01.

6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.35(B) Aiding escape or resistance to lawful authority R.C. 2921.35(B)**

1. The defendant is charged with aiding escape or resistance to lawful authority. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant, being confined in a detention facility, and with purpose to (promote) (facilitate) [an escape] [resistance to lawful authority], (made) (procured) (concealed) (unlawfully possessed) (gave to another inmate) an (instrument) (thing) which could have been used for such purpose.



2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).
3. ESCAPE. R.C. 2921.34(A). Modify to fit the facts.
4. DETENTION FACILITY. OJI-CR 521.35(A), § 4; R.C. 2921.01(F).
5. CONCLUSION. OJI-CR 425.01.
6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.36 Illegal conveyance of weapons, drugs, or prohibited items R.C.  
2921.36 (offenses committed on and after 10/5/09) [Rev. 11/5/16]**

1. The defendant is charged with illegal conveyance of (weapons) (drugs) (*describe other prohibited items*) onto the grounds of a (detention facility) ([institution] [office building] [*describe other place*] under control of the department of mental health and addiction services, the department of development disabilities, the department of youth services, or the department of rehabilitation and correction). Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of 20\_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), the defendant knowingly

(Use appropriate alternative[s])

(A) without written authorization of the person in charge and contrary to the written rules (conveyed) (attempted to convey) onto the grounds of a (detention facility) ([institution] [office building] [*describe other place*] under control of the department of mental health and addiction services, the department of development disabilities, the department of youth services, or the department of rehabilitation and correction) any

**COMMENT**

R.C. 2921.36(B) creates an exception to the prohibition of R.C. 2921.36(A). The Committee believes that the state has the burden of proving the exception does not apply.

(Use appropriate alternative[s])

(1) (deadly weapon) (dangerous ordnance) ([part of] [ammunition for use in] a [deadly weapon] [dangerous ordnance]).

(or)

(2) drug of abuse;

(or)

(3) intoxicating liquor.

**COMMENT**

Drawn from R.C. 2921.36(A) and (B).

(or)

(B) (delivered) (attempted to deliver) to a (person who was confined in a detention facility) (child confined in a youth services facility) (prisoner who is temporarily released from confinement for a work assignment) (patient in an institution under the control of the department of mental health and addiction services, or the department of developmental disabilities) any

*(Use appropriate alternative)*

(1) (deadly weapon) (dangerous ordnance) ([part of] [ammunition for use in] a [deadly weapon] [dangerous ordnance]);

(or)

(2) drug of abuse;

(or)

(3) intoxicating liquor.

**COMMENT**

Drawn from 2921.36(C).

(or)

(C) (delivered) (attempted to deliver) cash to (a person who is confined in a detention facility) (a child confined in a youth services facility) (a prisoner who was temporarily released from confinement for a work assignment).

**COMMENT**

Drawn from R.C. 2921.36(D).

(or)

(D) (delivered) (attempted to deliver) a (cellular telephone) (two-way radio) (*describe other electronic communications device*) to a (person who is confined in a detention facility) (child confined in a youth services facility) (prisoner who was temporarily released from confinement for a work assignment).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).



3. CONVEY. OJI-CR 523.122 § 3.
4. ATTEMPT. OJI-CR 523.02; R.C. 2923.02.
5. DETENTION FACILITY. R.C. 2921.01.
6. INSTITUTION. “Institution” means a (public) (private) facility or a part of a (public) (private) facility that is licensed by (*insert name of the state department in control of the institution*).

**COMMENT**

Drawn from R.C. 5123.01.

7. DEADLY WEAPON. OJI-CR 503.05 §§ 4 and 5; R.C. 2923.11(A).
8. DANGEROUS ORDNANCE. R.C. 2923.11(K) and (L).
9. DRUG OF ABUSE. R.C. 3719.011(A).
10. INTOXICATING LIQUOR. R.C. 4301.01.
11. CHILD. R.C. 2151.011.
12. AFFIRMATIVE DEFENSES:
  - (A) GENERAL. OJI-CR 417.27.
  - (B) TRANSPORTED FOR A LAWFUL PURPOSE. R.C. 2921.36(F)(1).

**COMMENT**

*The following affirmative defense applies only to those violations of R.C. 2921.36(A)(1) that are committed on and after March 17, 1998.*

(1) The defendant claims that the (*describe deadly weapon or dangerous ordnance*) was being transported in a motor vehicle for a lawful purpose and that it was not on his/her person.

(2) ADDITIONAL.

**COMMENT**

R.C. 2921.36(F)(1) provides that if the deadly weapon or dangerous ordnance in question was a firearm, the defendant must prove that it was unloaded and carried in a closed package. In such a case, the court should give the following additional instruction.

The defendant further claims that the firearm was unloaded and was being carried in a (closed package, box, or case) (compartment that can be reached only by

leaving the vehicle).

(C) NOT OTHERWISE PROHIBITED. R.C. 2921.36(E)(2).

**COMMENT**

*The following affirmative defense applies only to violations of R.C. 2921.36(C).*

The defendant claims that he/she was not otherwise prohibited by law from delivering the *(describe item)* to the *(confined person)* *(child)* *(prisoner)* *(patient)* and that

*(Use appropriate alternative[s])*

(1) he/she was permitted by the written rules of the *(describe facility, institution, office building, or other place)* to deliver the *(describe item)* to the *(confined person)* *(patient)*;

**COMMENT**

Drawn from R.C. 2921.36(F)(2)(a).

*(or)*

(2) he/she was given written authorization by the person in charge of the *(describe facility, institution, office building, or other place)* to deliver the *(describe item)* to the *(confined person)* *(patient)*.

**COMMENT**

Drawn from R.C. 2921.36(F)(2)(b).

**13. ADDITIONAL FINDINGS:**

(A) OFFICER OR EMPLOYEE. OJI-CR 425.25; R.C. 2921.36(A)(1) and (2), R.C. 2921.36(G).

(B) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2921.36(D) and (E), R.C. 2921.36(G).

**14. CONCLUSION. OJI-CR 425.01.**

**15. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.**

**16. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.**



**CR 521.38 Harassment with a bodily substance R.C. 2921.38 (offenses committed on and after 4/4/07) [Rev. 10/9/21]**

**COMMENT**

R.C. 2921.38(F) indicates that the statutory ban on harassment with a bodily substance “does not apply” to persons who are hospitalized, institutionalized, or confined in certain state institutions. Ohio appellate courts have reached differing conclusions about which party must prove or disprove the applicability or inapplicability of that exception. Compare *State v. Noble*, 9th Dist. Lorain No. 04CA008495, 2005-Ohio-600 (“the State had to prove that the detention facility was not a facility operated by the department of mental health or the department of . . . developmental disabilities”) with *State v. Gulley*, 8th Dist. Cuyahoga No. 109045, 2020-Ohio-3597 (“we . . . hold that R.C. 2921.38(F) is not an element of the crime of harassment with a bodily substance”) and *State v. Flucas*, 12th Dist. Warren No. CA2017-09-139, 2018-Ohio-3340 (“R.C. 2921.38(F) . . . does not constitute an additional element of the offense that the state must prove . . . [but is instead] in the nature of an affirmative defense”).

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court of Ohio considered similar “does not apply” language that appears in R.C. 2925.03, which defines the offense of trafficking in drugs. There, the Court held that the burden falls on the prosecution to prove in each case the inapplicability of the statute’s exception for drug manufacturers and certain licensed health professionals who handle drugs.

Minor changes to the exception in R.C. 2921.38(F) took effect on September 29, 2013 (when the reference to “department of mental health” was changed to “department of mental health and addiction services”) and on October 6, 2009 (when the reference to “department of mental retardation and developmental disabilities” was changed to “department of developmental disabilities”). Depending on the date of the offense, the trial judge may want to note those minor changes.

1. The defendant is charged with harassment with a bodily substance. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

(Use appropriate alternative)

(A) was confined in a detention facility and, with intent to (harass) (annoy) (threaten) (alarm) another person, (caused) (attempted to cause) the other person to come into contact with (blood) (semen) (urine) (feces) (describe other bodily substance) by (throwing it at) (expelling it upon) (describe other manner of causing contact) the other person;

(or)

(B) with intent to (harass) (annoy) (threaten) (alarm) a law-enforcement officer, (caused) (attempted to cause) the law-enforcement officer to come into contact with

(blood) (semen) (urine) (feces) (*describe other bodily substance*) by (throwing it at) (expelling it upon) (*describe other manner of causing contact*) the law-enforcement officer;

(or)

(C) with knowledge that he/she was (a carrier of [the virus that causes acquired immunodeficiency syndrome] [a hepatitis virus]) (infected with tuberculosis), and with intent to (harass) (annoy) (threaten) (alarm) another person, (caused) (attempted to cause) the other person to come into contact with (blood) (semen) (urine) (feces) (*describe other bodily substance*) by (throwing it at) (expelling it upon) (*describe other manner of causing contact*) the other person.

2. **CONFINED.** To be “confined” means to have one’s freedom of movement restrained or limited and to be unable to come and go freely.

#### COMMENT

Drawn from *State v. Porter*, 12th Dist. Warren Nos. CA2017-07-101, and CA2017-07-103, 2018-Ohio-3123.

3. **DETENTION FACILITY.** R.C. 2921.01.

4. **INTENT TO (HARASS) (ANNOY) (THREATEN) (ALARM).** OJI-CR 417.01; R.C. 2901.22(A).

#### COMMENT

The Committee believes that the trial judge should provide the jury with a definition of “intent” that is consistent with the definition of “purpose.” See *White v. Maxwell*, 174 Ohio St. 186 (1963) (“an allegation that the accused purposely killed is equivalent to an allegation that the accused intentionally killed”); *State v. Miller*, 8th Dist. Cuyahoga No. 93731, 2010-Ohio-4347 (holding that “‘intent’ and ‘purpose’ are synonymous” in a case involving R.C. 2921.38).

5. **CAUSATION.** OJI-CR 417.23, OJI-CR 417.25.

6. **ATTEMPT.** An “attempt” occurs when a person purposely engages in conduct that, if successful, would result in the (other person) (law-enforcement officer) coming into contact with a bodily substance.

#### COMMENT

Drawn from R.C. 2923.02.

7. **LAW-ENFORCEMENT OFFICER.** R.C. 2901.01.



## 8. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

**COMMENT**

The Committee believes the reference to “with knowledge” in a case prosecuted under R.C. 2921.38(C) should be accompanied by an instruction on the term “knowingly.”

## 9. CONCLUSION. OJI-CR 425.01.

## 10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.41 Theft in office R.C. 2921.41**

1. The defendant is charged with theft in office. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant was a (public) (party) official, and committed a theft offense, and

*(Use appropriate alternative[s])*

(A)(1) the defendant (used his/her office) ([permitted] [assented to] the use of his/her office) in aid of committing the theft offense.

*(or)*

(A)(2)(a) the (property) (service) involved was owned by (this state) (*insert name of other state*) (the United States) (a county) (a municipal corporation) (a township) (a [political subdivision] [department] [agency] of [this state] [*insert name of other state*] [the United States] [*describe political subdivision, department, or agency of any of the foregoing*]).

*(or)*

(A)(2)(b) the (property) (service) involved was (owned by a political party) (part of a political campaign fund).

2. PUBLIC OFFICIAL. “Public official” means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes but is not limited to legislators, judges, and law enforcement officers.

**COMMENT**

R.C. 2921.01(A).

3. PARTY OFFICIAL. “Party official” means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which

the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

**COMMENT**

R.C. 2921.01(C).

4. **THEFT OFFENSE.** Before you can find that the defendant committed a theft offense, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant (*describe each element of the applicable theft offense*).

**COMMENT**

Instructions must cover the elements of the pertinent theft offense or offenses as charged in the indictment, together with the meaning of pertinent words and phrases.

5. **PROPERTY.** R.C. 2901.01(A)(10).

6. **SERVICES.** "Services" include labor, personal services, professional services, public utility services, common carrier services, food, drink, transportation, entertainment, and cable television service.

**COMMENT**

R.C. 2913.01(E).

7. **ADDITIONAL FINDING:**

VALUE. OJI-CR 425.23; R.C. 2921.41(B).

**COMMENT**

This additional finding is required only for offenses committed on and after July 1, 1996.

8. **CONCLUSION.** OJI-CR 425.01.

9. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 521.42 Having an unlawful interest in a public contract R.C. 2921.42 [Rev. 1-22-11]**

1. The defendant is charged with having an unlawful interest in a public contract.



Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was a public official and knowingly

(*Use appropriate alternative[s]*)

(A)(1) (authorized) (employed the [authority] [influence] of his/her office to secure the authorization of) a public contract in which (he/she) (a member of his/her family) (his/her business associate) had an interest.

(*or*)

(A)(2) (authorized) (employed the [authority] [influence] of his/her office to secure) the investment of public funds in a (share) (bond) (mortgage) (*describe other security*), with respect to which (he/she) (a member of his/her family) (his/her business associate) (had an interest) (was an underwriter) (received a [brokerage] [origination] [servicing] fee).

(*or*)

(A)(3) during (his/her term of office) (within one year after his/her term of office), occupied a position of profit in the prosecution (carrying out) of a public contract authorized by (him/her) (*insert name of legislative body, commission, or board*) of which he/she was a member at the time of authorization) and the contract was not let (awarded) by competitive bidding to the lowest and best bidder.

(*or*)

(A)(4) had an interest in the (profits) (benefits) of a public contract entered into by or for the use of the (*insert name of political subdivision, governmental agency, or instrumentality*) with which he/she was connected.

(*or*)

(A)(5) had an interest in the (profits) (benefits) of a public contract that was not let (awarded) by competitive bidding when required by law and that involved more than one hundred fifty dollars.

2. PUBLIC OFFICIAL. "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

COMMENT

R.C. 2921.01.

3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

## 4. MEMBER OF FAMILY.

**COMMENT**

"Member of family" is not defined in R.C. Chapter 2921. According to Ohio Ethics Commission Advisory Opinion No. 80-001, for purposes of R.C. 2921.42 the term "a member of his family" includes, but is not limited to, a grandparent, parents, spouse, children, whether dependent or not, grandchildren, brothers and sisters, and any person related by blood or marriage and residing in the same household.

## 5. BUSINESS ASSOCIATE.

**COMMENT**

"Business associate" is not defined in R.C. Chapter 2921. There are various opinions by the Ohio Ethics Commission defining "business associate" for purposes of R.C. 2921.42.

## 6. PUBLIC CONTRACT. R.C. 2921.42(G)(1).

## 7. INTEREST IN A PUBLIC CONTRACT.

(A) NO BRIBERY OR PURPOSE TO DEFRAUD. (The defendant) (A member of the defendant's family) (Any business associate of the defendant) shall not be considered as having an "interest in a public contract" or "investment in public funds" when

(1) the interest of such person is limited to (owning or controlling shares) (being a creditor) of the (corporation) (*describe other organization*) that is (the contractor on the public contract involved) (the issuer of the security in which public funds are invested); and

(2) the (shares owned or controlled by such person do not exceed five per cent of the outstanding shares) (amount due such person as creditor does not exceed five per cent of the total indebtedness) of the (corporation) (*describe other organization*); and

(3) such person, prior to the time the public contract was entered into, filed with the (*insert name of political subdivision, governmental agency, or instrumentality*) involved, an affidavit giving his/her exact status in connection with the (corporation) (*describe other organization*).

**COMMENT**

R.C. 2921.42(B).



**(B) BRIBERY OR PURPOSE TO DEFRAUD.****COMMENT**

The jury must be instructed that if they find beyond a reasonable doubt that there was bribery or purpose to defraud in the transaction, the five percent rule does not apply and any ownership interest or creditor obligation is sufficient. Instructions must cover the elements of bribery or purpose to defraud, or both, together with the meaning of pertinent words and phrases.

**(C) PARTICIPATION IN A PUBLIC HOUSING PROGRAM.** “Interest in a public contract” does not include participation by a public employee in any housing program funded by public moneys if he/she otherwise qualifies for the program and did not use the authority of influence of his/her office or employment to secure benefits from the program and if the moneys were to be used on his/her primary residence.

**COMMENT**

R.C. 2921.42(D). “Public employee” is not defined in R.C. Chapter 2921. The Committee believes that the term “public employee” is synonymous with “public official.”

**8. AFFIRMATIVE DEFENSES:****COMMENT**

R.C. 2921.42(C) creates an exception to the prohibition of R.C. 2921.42(A). The Committee believes this is an affirmative defense under R.C. 2901.05(C)(2) or in the nature of an affirmative defense and must be treated as such. See *State v. Little* (March 14, 1991), 8th Dist. No. 57033; *State v. Hassell* (May 5, 1993), 1st Dist. No. C-920530.

**(A) GENERAL. OJI-CR 417.27.**

**(B) NECESSARY SUPPLIES OR SERVICES. R.C. 2921.42(C).** The defendant claims that

(1) the subject of the public contract was necessary supplies or services for the (political subdivision) (governmental [agency] [instrumentality]) involved; and

(2) the supplies or services were (unobtainable elsewhere for the same or lower cost) (being furnished to the [political subdivision] [governmental (agency) (instrumentality)]) as part of a continuing course of dealing established prior to the defendant becoming associated with the [political subdivision] [governmental

(agency) (instrumentality)] involved); and

(3) the treatment accorded the (political subdivision) (governmental [agency] [instrumentality]) was preferential to or the same as that accorded other customers and clients in similar transactions; and

(4) the entire transaction was conducted at arm's length, with full knowledge by the (political subdivision) (governmental [agency] [instrumentality]) involved, of the interest of the (defendant) (member of the defendant's family) (the defendant's business associate), and the defendant took no part in the deliberations or decision of the (political subdivision) (governmental [agency] [instrumentality]) with respect to the public contract.

#### COMMENT

R.C. 2921.42(C).

(C) TOWNSHIP TRUSTEE IN A TOWNSHIP OF FIVE THOUSAND OR LESS. R.C. 2921.42(F). The defendant claims that he/she was a township trustee in a township with a population of five thousand or less, and that the

(1) subject of the public contract was necessary supplies or services for the township, and the amount of the contract was less than five thousand dollars per year; and

(2) the supplies or services were being furnished to the township as part of a continuing course of dealing established before the defendant held that office with the township; and

(3) the treatment accorded the township was preferential to or the same as that accorded other customers and clients in similar transactions; and

(4) the entire transaction was conducted with full knowledge by the township of the interest of the (defendant) (member of the defendant's family) (the defendant's business associate).

#### COMMENT

R.C. 2921.42 was amended by H.B. 285, effective 3/2/94, and by H.B. 150, effective 6/23/94. The first amendment added provisions to division (E) and a new division (F) providing an affirmative defense for township trustees in a township of 5,000 or less (under limited circumstances). The second amendment added a new division (D) excepting public employee's participation in public housing (under limited circumstances) and changed the lettering of the subsequent divisions without taking into account the changes made by the earlier amendment. The Committee believes (1) that these amendments are not irreconcilable and are required to be harmonized under R.C. 1.52, and (2) that the division designated (F), which states that certain appointments by a prosecuting attorney or a township



trustee are not prohibited by R.C. 2921.42, provides an exemption from the operation of the statute, whereas the other division designated (F) provides an affirmative defense (under limited circumstances) for a township trustee of a small township.

9. CONCLUSION. OJI-CR 425.01.

10. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

11. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.43(A) Soliciting improper compensation (illegal or additional compensation) R.C. 2921.43(A)**

1. The defendant is charged with soliciting improper compensation. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

*(Use appropriate alternative)*

(A) was a public servant and knowingly (solicited) (accepted)

*(Use appropriate alternative[s])*

(1) *(describe compensation other than as allowed by law)* (for the [performance of his/her official duties] [performance of any other act or service in his/her public capacity] [general performance of the duties of his/her public office or public employment]) (as a supplement to his/her public compensation).

*(or)*

(2) additional or greater fees or costs than are allowed by law to perform his/her official duties.

*(or)*

(B) knowingly (promised) (gave) to a public servant

*(Use appropriate alternative[s])*

(1) *(describe compensation other than as allowed by law)* (for the [performance of the public servant's official duties] [performance of any other act or service in the public servant's public capacity] [general performance of the duties of the public servant's public office or public employment]) (as a supplement to the public servant's public compensation).

*(or)*

(2) additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

2. PUBLIC SERVANT. R.C. 2921.01(B).

3. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
4. AFFIRMATIVE DEFENSE:

**COMMENT**

This affirmative defense is available only to defendants to whom § 1(B) above applies.

(A) GENERAL. OJI-CR 417.27.

(B) VOLUNTARY CONTRIBUTION. R.C. 2921.43(F).

The defendant claims that his/her contribution was a voluntary contribution to a (political party) (campaign committee) (legislative campaign fund) (political action committee) (political contributing entity).

5. CONCLUSION. OJI-CR 425.01.
6. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.
7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.43(B) Soliciting improper compensation (for appointment, preference)  
R.C. 2921.43(B)**

**COMMENT**

The Committee believes that R.C. 2921.43(B) imposes strict criminal liability. See *State v. Wac* (1981), 68 Ohio St.2d 84, 22 O.O.3d 299, 428 N.E.2d 428, applying R.C. 2901.21(B).

1. The defendant is charged with soliciting improper compensation. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant

*(Use appropriate alternative[s])*

was a public servant and for his/her own personal or business use,

*(or)*

for (his/her own personal or business use) (the personal or business use of a [public servant] [party official]),

(solicited) (accepted) anything of value in consideration of

*(Use appropriate alternative[s])*

(1) (appointing) ([securing] [maintaining] [renewing] the appointment of) a person



to any public (office) (employment) (agency).

(or)

(2) (preferring) (maintaining the status of) any public employee with respect to his/her (compensation) (duties) (placement) (location) (promotion) (*describe any other material aspect of the public employee's employment*).

2. PUBLIC SERVANT. R.C. 2921.01(B).

3. PARTY OFFICIAL. "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which he directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

**COMMENT**

R.C. 2921.01(C).

4. AFFIRMATIVE DEFENSE:

(A) GENERAL. OJI-CR 417.27.

(B) VOLUNTARY CONTRIBUTION. R.C. 2921.43(F).

The defendant claims that he/she solicited or accepted a voluntary contribution to or on behalf of (political party) (campaign committee) (legislative campaign fund) (political action committee) (political contributing entity).

5. CONCLUSION. OJI-CR 425.01.

6. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.43(C) Soliciting improper compensation (coerced contributions) R.C. 2921.43(C)**

**COMMENT**

The Committee believes that R.C. 2921.43(C) imposes strict criminal liability. See *State v. Wac* (1981), 68 Ohio St.2d 84, 22 O.O.3d 299, 428 N.E.2d 428, applying R.C. 2901.21(B).

1. The defendant is charged with soliciting improper compensation. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant, for the benefit of a (political party) (campaign committee) (legislative campaign fund) (political action committee) (political contrib-

uting entity), coerced (forced) a contribution in consideration of

*(Use appropriate alternative[s])*

(C)(1) (appointing) ([securing] [maintaining] [renewing] the appointment of) a person to a public (office) (employment) (agency).

*(or)*

(C)(2) (preferring) (maintaining the status of) a public employee with respect to (compensation) (duties) (placement) (location) (promotion) *(describe other material aspects)* of his/her employment.

#### COMMENT

“Legislative campaign fund” was added to the list of organizations in R.C. 2921.42(C) by S.B. 8, effective 8/25/95, and “political contributing entity” by S.B. 134, effective 7/13/98.

2. POLITICAL PARTY. R.C. 3517.01(A).

3. CAMPAIGN COMMITTEE. “Campaign committee” means a candidate or a combination of two or more persons authorized by a candidate to receive contributions and make expenditures.

#### COMMENT

Drawn from R.C. 3517.01(B)(1).

4. LEGISLATIVE CAMPAIGN FUND. “Legislative campaign fund” means a fund that is established as an auxiliary of a state political party and associated with one of the houses of the general assembly.

#### COMMENT

R.C. 3517.01(B)(15) effective 8/25/95.

5. POLITICAL ACTION COMMITTEE. R.C. 3517.01(B)(8).

6. POLITICAL CONTRIBUTING ENTITY. R.C. 3517.01(B)(21) effective 7/13/98.

7. CONTRIBUTION. R.C. 3517.01(B)(5).

8. AFFIRMATIVE DEFENSE:

GENERAL. OJI-CR 417.27.

VOLUNTARY CONTRIBUTION. R.C. 2921.43(F).

The defendant claims that the contribution to the (political party) (campaign



committee) (legislative campaign fund) (political action committee) (political contributing entity) was voluntary.

9. CONCLUSION. OJI-CR 425.01.

10. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

11. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.44(A) Dereliction of duty (law enforcement officer) R.C. 2921.44(A)**

1. The defendant is charged with dereliction of duty. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant, was a law enforcement officer, and negligently failed to

*(Use appropriate alternative)*

(A)(1) serve a lawful warrant without delay.

*(or)*

(A)(2) ([prevent] [halt] the commission of an offense) (apprehend an offender), when it was in his/her power to do so (alone) (with available assistance).

2. LAW ENFORCEMENT OFFICER. R.C. 2901.01(K).

3. NEGLIGENTLY. OJI-CR 417.19; R.C. 2901.22(D).

4. CONCLUSION. OJI-CR 425.01.

5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.44(B) Dereliction of duty (law enforcement, ministerial, judicial officer) R.C. 2921.44(B)**

1. The defendant is charged with dereliction of duty. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (other jurisdiction), Ohio, the defendant was a (law enforcement) (ministerial) (judicial) officer, and negligently failed to perform a lawful duty in a criminal (case) (proceeding).

2. LAW ENFORCEMENT OFFICER. R.C. 2901.01(K).

3. MINISTERIAL OFFICER. "Ministerial officer" means any person whose duties require obedience to instructions or the law, and do not allow the exercise of discretion or judgment with respect to the duty in issue.

**COMMENT**

Drawn from Black's Law Dictionary 1011 (7th Ed. 1999).

4. **JUDICIAL OFFICER.** “Judicial officer” means judge of the court of common pleas, probate court, juvenile court, municipal court, or county court, or the mayor of a municipal corporation having a mayor’s court, and any magistrate appointed by a court or mayor’s court.

**COMMENT**

Drawn from Crim.R. 2(E) and (F).

5. **NEGLIGENTLY.** OJI-CR 417.19; R.C. 2901.22(D).

6. **LAWFUL DUTY.** “Lawful duty” means any act or acts required by law.

7. **CONCLUSION.** OJI-CR 425.01.

8. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 521.44(C) Dereliction of duty (officer of a detention facility) R.C. 2921.44(C)**

1. The defendant is charged with dereliction of duty. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was an officer who had charge of a detention facility, and negligently

*(Use appropriate alternative)*

(C)(1) allowed the detention facility to become (littered) (unsanitary).

*(or)*

(C)(2) failed to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter and medical attention.

*(or)*

(C)(3) failed to (control an unruly prisoner) (prevent [intimidation of] [physical harm to] a prisoner by another).

*(or)*

(C)(4) allowed a prisoner to escape.

*(or)*

(C)(5) failed to observe a lawful and reasonable regulation for the management of the detention facility.

2. **DETENTION FACILITY.** R.C. 2921.01(F).

**COMMENT**

The Committee believes that “detention facility” includes those facilities turned



over to private contractors for private operation and management under R.C. 9.06 and 9.07.

3. NEGLIGENTLY. OJI-CR 417.19; R.C. 2901.22(D).

4. PHYSICAL HARM TO PERSONS. "Physical harm to persons" means any injury, illness, or other physiological impairment regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(A)(3).

5. CONCLUSION. OJI-CR 425.01.

6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.44(D) Dereliction of duty (public official) R.C. 2921.44(D)**

1. The defendant is charged with dereliction of duty. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was a public official of the state and recklessly (created a deficiency in) (incurred a liability in) (expended) a greater sum than was appropriated by the general assembly for the use in any one year of the (department) (agency) (institution) of the state with which the defendant was connected.

2. PUBLIC OFFICIAL. "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

**COMMENT**

R.C. 2921.01(A).

3. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

4. CONCLUSION. OJI-CR 425.01.

5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.44(E) Dereliction of duty (public servant) R.C. 2921.44(E)**

1. The defendant is charged with dereliction of duty. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*),

Ohio, the defendant was a public servant and recklessly (failed to perform a duty expressly imposed by law) (did an act expressly forbidden by law) with respect to his/her office.

2. PUBLIC SERVANT. R.C. 2921.01(B).

**COMMENT**

Effective June 8, 2000, the definition of "public servant" in R.C. 2921.01(B) was expanded for violations of R.C. 2921.44(E) to include an officer or employee of a private contractor as defined in R.C. 9.08(A)(2).

3. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

4. CONCLUSION. OJI-CR 425.01.

5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.45 Interfering with civil rights R.C. 2921.45**

1. The defendant is charged with interfering with civil rights. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was a public servant, and under color of his/her (office) (employment) (authority), knowingly (deprived) ([conspired] [attempted] to deprive) a person of his/her (*describe constitutional or statutory right*).

2. PUBLIC SERVANT. R.C. 2921.01(B).

3. COLOR. "Color of (office) (employment) (authority)" means having the appearance of the (office) (employment) (authority).

**COMMENT**

Drawn from Black's Law Dictionary 259 (7th Ed. 1999).

4. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

5. CONCLUSION. OJI-CR 425.01.

6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.51(B) Impersonating a peace officer or private policeman R.C. 2921.51(B)**

1. The defendant is charged with impersonating a peace officer or private policeman. Before you can find the defendant guilty, you must find beyond a reasonable doubt that



on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant impersonated a (peace officer) (private policeman).

2. IMPERSONATE. R.C. 2921.51(A)(3).

3. PEACE OFFICER. R.C. 2921.51(A)(1).

4. PRIVATE POLICEMAN. "Private policeman" means any security guard, special policeman, private detective, or other person who is privately employed in a police capacity.

**COMMENT**

R.C. 2921.51(A)(2).

5. AFFIRMATIVE DEFENSE:

(A) GENERAL. OJI-CR 417.27.

(B) LAWFUL PURPOSE. R.C. 2921.51(F).

The defendant claims that his/her impersonation of a peace officer was for a lawful purpose. The defendant's impersonation was for a lawful purpose if it was not otherwise prohibited by law and was not intended to mislead or deceive.

6. CONCLUSION. OJI-CR 425.01.

7. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03; R.C. 2921.51(F).

8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 521.51(C) Impersonating a peace officer or private policeman (arrest or search) R.C. 2921.51(C)**

1. The defendant is charged with impersonating a peace officer or private policeman. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant, by impersonating a (peace officer) (private policeman), ([arrested] [detained] [searched] a person) (searched the property of any person).

2. IMPERSONATE. R.C. 2921.51(A)(3).

3. PEACE OFFICER. R.C. 2921.51(A)(1).

4. PRIVATE POLICEMAN. "Private policeman" means any security guard, special policeman, private detective, or other person who is privately employed in a police capacity.

**COMMENT**

R.C. 2921.51(A)(2).

**5. ARREST OR DETAIN.****COMMENT**

The Committee believes that since an arrest always includes a detention, there is no need to instruct the jury on the definition of "arrest."

**6. CONCLUSION. OJI-CR 425.01.****7. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 521.51(D) Impersonating a peace officer or private policeman (to commit or facilitate an offense) R.C. 2921.51(D)**

1. The defendant is charged with impersonating a peace officer or private policeman. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County) (*other jurisdiction*), Ohio, the defendant, with purpose to (commit) (facilitate the commission of) (*insert name of offense*), impersonated a (peace officer) (private policeman) ([officer] [agent] [employee] of the state).

**2. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).****3. OFFENSE.****COMMENT**

Impersonating a peace officer or private policeman requires that the defendant have the purpose to commit or facilitate the commission of a specific offense. Instructions must describe the elements, except culpable mental state, of that offense, together with the meaning of the words and phrases.

**4. IMPERSONATE. R.C. 2921.51(A)(3).****5. PEACE OFFICER. R.C. 2921.51(A)(1).**

6. PRIVATE POLICEMAN. "Private policeman" means any security guard, special policeman, private detective, or other person who is privately employed in a police capacity.



**COMMENT**

R.C. 2921.51(A)(2).

**7. ADDITIONAL FINDING.****COMMENT**

The Committee believes that since the jury must find that the defendant's purpose was to commit a specific felony or misdemeanor, no special finding is necessary.

**8. CONCLUSION. OJI-CR 425.01.****9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 521.51(E) Impersonating a peace officer or private policeman (while committing a felony) R.C. 2921.51(E)**

1. The defendant is charged with impersonating a police officer or private policeman. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant, while impersonating a (peace officer) (private policeman) ([officer] [agent] [employee] of the state), (*describe the elements of the felony together with the meaning of the words and phrases*).

**2. IMPERSONATE. R.C. 2921.51(A)(3).****3. PEACE OFFICER. R.C. 2921.51(A)(1).**

4. PRIVATE POLICEMAN. "Private policeman" means any security guard, special policeman, private detective, or other person who is privately employed in a police capacity.

**COMMENT**

R.C. 2921.51(A)(2).

**5. CONCLUSION. OJI-CR 425.01.****6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 521.52 Using sham legal process R.C. 2921.52**

1. The defendant is charged with using sham legal process. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ (County)

(other jurisdiction), Ohio, the defendant, knowing he was using sham legal process, knowingly

(Use appropriate alternative[s])

(1) (issued) (displayed) (delivered) (distributed) (*describe other use*) sham legal process.

(or)

(2) used sham legal process to (arrest) (detain) (search) (seize) (any person) (the property of another person).

(or)

(3) (committed) (facilitated the commission of) (*insert name of the offense*) using sham legal process.

(or)

(4) committed (*insert name of the felony*) by using sham legal process.

2. SHAM LEGAL PROCESS. R.C. 2921.52(A)(4).
3. LAWFULLY ISSUED. R.C. 2921.52(A)(1).
4. STATE. R.C. 2921.52(A)(2).
5. POLITICAL SUBDIVISION. R.C. 2921.52(A)(3).
6. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
7. ARREST, DETAIN OR SEIZE.

#### COMMENT

The Committee believes that since an arrest always includes a detention or a seizure, there is no need to instruct the jury on the definition of "arrest."

#### 8. OFFENSE OR FELONY

#### COMMENT

Instructions must be given describing the elements of the offense or the felony, with explanation of technical words and phrases.

#### 9. AFFIRMATIVE DEFENSE:

GENERAL. OJI-CR 417.27.

LAWFUL PURPOSE. R.C. 2921.52(C), (B)(1) and (2).

The defendant claims that the use of sham legal process was for a lawful purpose.



10. CONCLUSION. OJI-CR 425.01.
11. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03; R.C. 2921.52(C).
12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

*(Text continued on page 143)*

## Chapter CR 527

### MISCELLANEOUS OFFENSES

**CR 527.01 Abuse of a corpse**

**CR 527.02(B)(1) Illegal distribution of cigarettes or other tobacco products (offenses committed on and after 3/15/01) [Rev. 8/14/13]**

**CR 527.02(B)(2) Illegal distribution of cigarettes or other tobacco products (offenses committed on and after 3/15/01) [Rev. 8/14/13]**

**CR 527.02(B)(3) Permitting children to use cigarettes or other tobacco products (offenses committed on and after 3/15/01) [Rev. 8/14/13]**

**CR 527.02(B)(4) Illegal distribution of cigarettes or other tobacco products [Rev. 8/14/13]**

**CR 527.02(B)(5) Illegal distribution of cigarettes or other tobacco products [Rev. 8/14/13]**

**CR 527.02(C) Illegal distribution of cigarettes or other tobacco products (offenses committed before 7/5/02) [Rev. 8/14/13]**

**CR 527.02(C) Illegal distribution of cigarettes or other tobacco products (offenses committed on and after 7/5/02) [Rev. 8/14/13]**

**CR 527.03 Interference with fair housing rights**

**CR 527.11 Desecration**

**CR 527.12 Ethnic intimidation**

**CR 527.13 Selling or donating contaminated blood**

**CR 527.22 Misuse of criminal record information R.C. 2927.22 (offenses committed on and after 1/18/18) [Rev. 10/13/18]**

**CR 527.24 Unlawful advertising of massage R.C. 2927.17 (offenses committed on and after 6/20/14) [Rev. 10/3/15]**

**CR 527.24(B) Contaminating substance for human consumption or use**

**CR 527.24(C) Spreading a false report of contamination**

**CR 527.27(A) Illegal bail bond agent practices (offenses committed on and after 10/09/01)**

**CR 527.27(B) Illegal bail bond agent practices (offenses committed on and after 10/09/01)**

**CR 527.01 Abuse of a corpse R.C. 2927.01**

1. The defendant is charged with abuse of a corpse. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant, without being authorized by law,

*(Use appropriate alternative)*

(A) treated a human corpse in a way that the defendant knew would outrage reasonable family sensibilities.

*(or)*



(B) recklessly treated a human corpse in a way that would outrage reasonable community sensibilities.

#### COMMENT

The Committee believes that the culpable mental state required for a violation of R.C. 2927.01(B) is recklessness. See *State v. Glover* (1984), 17 Ohio App.3d 256, 479 N.E.2d 901. See generally *State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231, 733 N.E.2d 1118; but see *State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

2. **AUTHORIZED BY LAW.** Persons authorized by law include a county coroner and designated members of his/her staff, physicians and surgeons, accredited medical students, embalmers certified to remove human organs for transplant purposes, persons authorized to remove certain human organs by consent of the deceased according to law, and all other persons acting under authority of law.

3. **KNOWINGLY.** OJI-CR 417.11; R.C. 2901.22(B).

4. **RECKLESSLY.** OJI-CR 417.17; R.C. 2901.22(C).

5. **CONCLUSION.** OJI-CR 425.01.

6. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 527.02(B)(1) Illegal distribution of cigarettes or other tobacco products**  
**R.C. 2927.02(B)(1) (offenses committed on and after 3/15/01)**  
**[Rev. 8/14/13]**

1. The defendant is charged with illegal distribution of cigarettes or other tobacco products. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant recklessly gave, sold, or distributed (cigarettes) (*describe other tobacco products*) (papers used to roll cigarettes) to a child.

#### COMMENT

The defendant may be an individual, or a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, or an agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes. R.C. 2927.02(B).

R.C. 2927.02(E) provides that R.C. 2927.02(B)(1) does not apply when the child is participating in a research protocol. The Committee believes that this exception, or exemption, may necessitate instruction as an element of the offense. See *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

In *Nucklos* the Supreme Court held that "R.C. 2925.03(B)(1) excludes licensed

health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances.”

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to a defendant as an element as opposed to an affirmative defense. *See State v. Durbin*, 9th Dist. No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is either an element of the offense that the state must prove beyond a reasonable doubt or an affirmative defense that a defendant must prove.

2. PARTICIPATION IN RESEARCH PROTOCOL (ADDITIONAL). Before you can find the defendant guilty, you must also find beyond a reasonable doubt that the child was not participating in a research protocol. The child was participating in a research protocol if the child’s (parent) (guardian) (legal custodian) consented in writing to the child participating in the research protocol, an institutional human subjects protection review board, or an equivalent entity, approved the research protocol, and the child was participating in the research protocol at the (facility) (*describe other location*) specified in the research protocol.

#### COMMENT

Drawn from R.C. 2927.02(E). The trial judge should give this instruction only if the judge concludes this is an element. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

3. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

#### COMMENT

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *See State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231; but see *State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

4. DISTRIBUTE. “Distribute” means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes.



**COMMENT**

R.C. 2927.02(A)(3).

5. CIGARETTES. "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

**COMMENT**

R.C. 2927.02(A)(2).

6. TOBACCO PRODUCT. "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

**COMMENT**

R.C. 2927.02(A)(5).

7. CHILD. R.C. 2927.02(A)(1), R.C. 2151.011.

8. AFFIRMATIVE DEFENSE:

(A) GENERAL. OJI-CR 417.27.

(B) CHILD ACCOMPANIED BY PARENT, SPOUSE OR GUARDIAN. The defendant claims that the child was accompanied by a (parent) (spouse who was eighteen years of age or older) (legal guardian of the child).

**COMMENT**

Drawn from R.C. 2927.02(D)(1).

(C) PARENT OF THE CHILD. The defendant claims that he/she is the (parent) (spouse who is eighteen years of age or older) (legal guardian) of the child.

**COMMENT**

Drawn from R.C. 2927.02(D)(2).

(D) TRANSACTION SCAN. (offenses committed on and after 9/21/00). The defendant claims that at the time of the offense, he/she completed, and reasonably relied upon, a transaction scan. To establish an affirmative defense by use of a

transaction scan, the defendant must prove by the greater weight of the evidence that all of the following occurred

- (1) that when attempting to purchase or receive cigarettes or other tobacco products, (*insert name of license or card holder*) presented (a [driver's] [commercial driver's] license) (an identification card);
- (2) that a transaction scan of the ([driver's] [commercial driver's] license) (identification card) presented by (*insert name of license or card holder*) indicated that the (license) (card) was valid; and
- (3) that the cigarettes or other tobacco products were (sold) (given away) (distributed) to (*insert name of license or card holder*) in reasonable reliance on the identification presented and the completed transaction scan.

**COMMENT**

Drawn from R.C. 2927.022(A).

(E) WRITTEN POLICY. In determining whether the defendant has proven the affirmative defense of use of a transaction scan, you shall consider any written policy that the seller had adopted and implemented and that was intended to prevent the illegal sales or distribution of cigarettes or other tobacco products to persons under the age of eighteen, and whether the defendant followed that policy.

**COMMENT**

Drawn from R.C. 2927.022(B).

(F) REASONABLE RELIANCE. "Reasonable reliance upon the identification presented and the completed transaction scan" may require the defendant to exercise reasonable diligence to determine, and the use of a transaction scan does not excuse the defendant from exercising reasonable diligence to determine whether

- (1) the person to whom the defendant (sold) (gave away) (distributed) the cigarettes or other tobacco products was eighteen years of age or older; and
- (2) the description and picture appearing on the ([driver's] [commercial driver's] license) (identification card) presented by (*insert name of license or card holder*) was that of (*insert name of license or card holder*).

**COMMENT**

Drawn from R.C. 2927.022(B).

(G) DEFINITIONS:

(1) TRANSACTION SCAN. “Transaction scan” means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver’s or commercial driver’s license or an identification card that is presented as a condition for purchasing or receiving cigarettes or other tobacco products.

**COMMENT**

R.C. 2927.021(A)(4).

(2) TRANSACTION SCAN DEVICE. “Transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver’s or commercial driver’s license or an identification card.

**COMMENT**

R.C. 2927.021(A)(5).

(3) IDENTIFICATION CARD. “Identification card” means an identification card issued by the Ohio Bureau of Motor Vehicles.

**COMMENT**

Drawn from R.C. 2927.021(A)(2) and R.C. 4507.50–4507.52.

**9. ADDITIONAL FINDING:**

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(F)(1).

10. CONCLUSION. OJI-CR 425.01.

11. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

12. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.02(B)(2) Illegal distribution of cigarettes or other tobacco products**  
**R.C. 2927.02(B)(2) (offenses committed on and after 3/15/01)**  
**[Rev. 8/14/13]**

1. The defendant is charged with illegal distribution of cigarettes or other tobacco products. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant recklessly gave



away, sold, or distributed (cigarettes) (*describe other tobacco products*) (papers used to roll cigarettes) in a place that did not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, or papers used to roll cigarettes to a person under eighteen years of age is prohibited by law.

#### COMMENT

The defendant may be an individual, or a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, or an agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes. R.C. 2927.02(B).

R.C. 2927.02(E) provides that R.C. 2927.02(B)(2) does not apply when the recipient is a child who is participating in a research protocol. The Committee believes that this exception, or exemption, may necessitate instruction as an element of the offense. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

In *State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792, the Supreme Court held that "R.C. 2925.03(B)(1) excludes licensed health professionals from being subject to drug-trafficking charges, and the burden of proving the inapplicability of this exclusion rests upon the State. Therefore, to convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the State bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances."

The Committee recognizes that this case presents a dilemma for the trial judge as to when to instruct the jury that the state must prove that the exception in the criminal statute does not apply to a defendant as an element as opposed to an affirmative defense. *See State v. Durbin*, 9th Dist. No. 10CA0136-M, 2012-Ohio-301, which holds that the exception is either an element of the offense that the state must prove beyond a reasonable doubt or an affirmative defense that a defendant must prove.

2. PARTICIPATION IN RESEARCH PROTOCOL (ADDITIONAL). Before you can find the defendant guilty, you must also find beyond a reasonable doubt that the recipient of the (cigarettes) (*describe other tobacco products*) (papers used to roll cigarettes) was not a child who was participating in a research protocol. The child was participating in research protocol if the child's (parent) (guardian) (legal custodian) consented in writing to the child participating in the research protocol, an institutional human subjects protection review board, or an equivalent entity, approved the research protocol, and the child was participating in the research protocol at the (facility) (*describe other location*) specified in the research protocol.

**COMMENT**

Drawn from R.C. 2927.02(E). The trial judge should give this instruction only if the judge concludes this is an element. *See State v. Nucklos*, 121 Ohio St.3d 332, 2009-Ohio-792.

**3. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).****COMMENT**

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231; *but see State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

**4. DISTRIBUTE. “Distribute” means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes.****COMMENT**

R.C. 2927.02(A)(3).

**5. CIGARETTES. “Cigarette” includes clove cigarettes and hand-rolled cigarettes.****COMMENT**

R.C. 2927.02(A)(2).

**6. TOBACCO PRODUCT. “Tobacco product” means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.****COMMENT**

R.C. 2927.02(A)(5).

**7. CHILD. R.C. 2927.02(A)(1), R.C. 2151.011.****8. ADDITIONAL FINDING:**

(A) **PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(F)(1).**

**9. CONCLUSION. OJI-CR 425.01.**

10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.02(B)(3) Permitting children to use cigarettes or other tobacco products R.C. 2927.02(B)(3) (offenses committed on and after 3/15/01) [Rev. 8/14/13]**

1. The defendant is charged with permitting children to use cigarettes or other tobacco products. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant knowingly furnished false information regarding the name, age, or other identification of any child with purpose to obtain (cigarettes) (*describe other tobacco products*) (papers used to roll cigarettes) for that child.

**COMMENT**

The defendant may be an individual, or a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, or an agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes. R.C. 2927.02(B).

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. CIGARETTES. "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

**COMMENT**

R.C. 2927.02(A)(2).

4. TOBACCO PRODUCT. "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

**COMMENT**

R.C. 2927.02(A)(5).

5. CHILD. R.C. 2927.02(A)(1), R.C. 2151.011.

6. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

7. ADDITIONAL FINDING:

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(F)(2).



8. CONCLUSION. OJI-CR 425.01.

9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.02(B)(4) Illegal distribution of cigarettes or other tobacco products**  
**R.C. 2927.02(B)(4) [Rev. 8/14/13]**

1. The defendant is charged with illegal distribution of cigarettes or other tobacco products. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant recklessly (manufactured) (sold) (distributed) in Ohio any ([pack] [*describe other container*] of cigarettes that contained fewer than twenty cigarettes) (package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco).

**COMMENT**

The defendant may be an individual, or a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, or an agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes. R.C. 2927.02(B).

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *See State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231; *but see State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

3. DISTRIBUTE. "Distribute" means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes.

**COMMENT**

R.C. 2927.02(A)(3).

4. CIGARETTES. "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

**COMMENT**

R.C. 2927.02(A)(2).

5. TOBACCO PRODUCT. "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

**COMMENT**

R.C. 2927.02(A)(5).

6. ADDITIONAL FINDING:

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(F)(1).

7. CONCLUSION. OJI-CR 425.01.

8. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.02(B)(5) Illegal distribution of cigarettes or other tobacco products**  
**R.C. 2927.02(B)(5) [Rev. 8/14/13]**

1. The defendant is charged with illegal distribution of cigarettes or other tobacco products. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant recklessly sold cigarettes in a smaller quantity than that placed in the (pack) (*describe other container*) by the manufacturer.

**COMMENT**

The defendant may be an individual, or a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, or an agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes. R.C. 2927.02(B).

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *See State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231; *but see State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

3. CIGARETTES. "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

**COMMENT**

R.C. 2927.02(A)(2).

**4. ADDITIONAL FINDING:**

(A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(F)(1).

**5. CONCLUSION. OJI-CR 425.01.****6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.****CR 527.02(C) Illegal distribution of cigarettes or other tobacco products R.C. 2927.02(C) (offenses committed before 7/5/02) [Rev. 8/14/13]**

1. The defendant is charged with illegal distribution of cigarettes, other tobacco products, or papers used to roll cigarettes. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant recklessly (sold) (offered to sell) cigarettes or other tobacco products (by) (from) a vending machine and the machine was located

*(Use appropriate alternative[s])*

(C)(1) in an area within a (factory) (business) (office) (*insert other place*) that was open to the general public.

*(or)*

(C)(2) in an area to which children were generally permitted access.

*(or)*

(C)(3) in a place that was not within the immediate vicinity, plain view, and control of (the person) (an employee of the person) who owned or operated the place so that all cigarettes and other tobacco product purchases from the vending machine would be readily observed by (the person) (an employee of the person) who owned or operated the place and the vending machine was accessible to the public after the place was closed.

**COMMENT**

“For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person.” R.C. 2927.02(C)(2)(a).



## 2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231, 733 N.E.2d 1118; but see *State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

## 3. CIGARETTES. "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

**COMMENT**

R.C. 2927.02(A)(2).

## 4. TOBACCO PRODUCT. "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

**COMMENT**

R.C. 2927.02(A)(5).

## 5. VENDING MACHINE. R.C. 2927.02(A)(6), 2913.01(I).

## 6. CHILDREN. R.C. 2927.02(A)(1), 2151.011(B)(6).

## 7. ADDITIONAL FINDING:

PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(E)(1).

## 8. CONCLUSION. OJI-CR 425.01.

## 9. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03.

## 10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.02(C) Illegal distribution of cigarettes or other tobacco products R.C. 2927.02(C) (offenses committed on and after 7/5/02) [Rev. 8/14/13]**

1. The defendant is charged with illegal distribution of cigarettes, or other tobacco products. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant recklessly (sold) (offered to sell) cigarettes or other tobacco products (by) (from) a vending machine and the machine was located in

(Use appropriate alternative[s])

(C)(1) an area within a (factory) (business) (office) (*insert other place*) that was open to the general public;

(or)

(C)(2) an area to which children were generally permitted access;

(or)

(C)(3) a place that was not within the immediate vicinity, plain view, and control of (the person) (an employee of the person) who owned or operated the place so that all cigarettes and other tobacco product purchased from the vending machine would be readily observed by (the person) (an employee of the person) who owned or operated the place and the vending machine was accessible to the public after the place was closed.

#### COMMENT

“For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person.” R.C. 2927.02(C)(2)(a).

#### 2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

#### COMMENT

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *State v. Collins*, 89 Ohio St.3d 524, 2000-Ohio-231; *but see State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121.

#### 3. CIGARETTES. “Cigarette” includes clove cigarettes and hand-rolled cigarettes.

#### COMMENT

R.C. 2927.02(A)(2).

#### 4. TOBACCO PRODUCT. “Tobacco product” means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

## COMMENT

R.C. 2927.02(A)(5).

5. VENDING MACHINE. R.C. 2927.02(A)(6), R.C. 2913.01.
6. CHILDREN. R.C. 2927.02(A)(1), R.C. 2151.011(B)(6).
7. UNMONITORED AREA (ADDITIONAL). A vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person.

## COMMENT

R.C. 2927.02(C)(2)(a).

8. ADDITIONAL FINDING:
  - (A) PRIOR CONVICTION. OJI-CR 425.15; R.C. 2927.02(F)(1).
9. CONCLUSION. OJI-CR 425.01.
10. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.03 Interference with fair housing rights R.C. 2927.03.**

1. The defendant is charged with interference with fair housing rights. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant did by (force) (threat of force) willfully (injure) (intimidate) (interfere with) (attempt to [injure] [intimidate] [interfere with]) (*insert name of person*)

## COMMENT

“Person” includes an individual, corporation, business trust, estate, trust, partnership, and association. R.C. 1.59(C).

*(Use appropriate alternative[s])*

(A)(1) because of (race) (color) (religion) (sex) (familial status) (national origin) (disability) (ancestry), and because that person had been (selling) (purchasing) (renting) (financing) (occupying) ([contracting] [negotiating] for the [sale] [pur-



chase] [rental] [financing] [occupation] of any) ([applying for] [participating in] any [service] [organization] [facility] relating to the business of [selling] [renting]) housing accommodations.

(or)

(A)(2) (because [insert name of person] had been) (in order to intimidate [insert name of person] [describe class of persons] from)

(Use appropriate alternative)

(A)(2)(a) participating, without discrimination on account of (race) (color) (religion) (sex) (familial status) (national origin) (disability) (ancestry), in (selling) (purchasing) (renting) (financing) (occupying) ([contracting] [negotiating] for the [sale] [purchase] [rental] [financing] [occupation] of any) ([applying for] [participating in] any [service] [organization] [facility] relating to the business of [selling] [renting]) housing accommodations.

(or)

(A)(2)(b) affording (*describe person*) (*describe class of persons*) the (opportunity) (protection) to participate, without discrimination on account of (race) (color) (religion) (sex) (familial status) (national origin) (disability) (ancestry), in (selling) (purchasing) (renting) (financing) (occupying) ([contracting] [negotiating] for the [sale] [purchase] [rental] [financing] [occupation] of any) ([applying for] [participating in] any [service] [organization] [facility] relating to the business of [selling] [renting]) housing accommodations.

(or)

(A)(3) (because [insert name of person] had been) (in order to discourage [insert name of person] from) lawfully

(Use appropriate alternative[s])

(aiding) (encouraging) other persons to participate, without discrimination on account of (race) (color) (religion) (sex) (familial status) (national origin) (disability) (ancestry), in (selling) (purchasing) (renting) (financing) (occupying) ([contracting] [negotiating] for the [sale] [purchase] [rental] [financing] [occupation] of any) ([applying for] [participating in] any [service] [organization] [facility] relating to the business of [selling] [renting]) housing accommodations.

(or)

participating in (speech) (peaceful assembly) opposing any denial of the opportunity to participate, without discrimination on account of (race) (color) (religion) (sex) (familial status) (national origin) (disability) (ancestry), in (selling) (purchasing) (renting) (financing) (occupying) ([contracting] [negotiating] for the [sale] [purchase] [rental] [financing] [occupation] of any) ([applying for] [participating in] any [service] [organization] [facility] relating to the business of [selling] [renting]) housing accommodations.

2. **FORCE.** “Force” means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

**COMMENT**

R.C. 2901.01(A)(1).

3. **THREAT OF FORCE.** “Threat of force” means any violence, compulsion, or constraint threatened to be used by any means upon or against a person or thing.

**COMMENT**

Drawn from R.C. 2901.01(A)(1).

4. **WILLFULLY.** “Willfully” means purposely.
5. **PURPOSELY.** OJI-CR 417.01; R.C. 2901.22(A).
6. **INJURE.** “Injure” means to cause physical harm to persons.

**COMMENT**

The Committee believes that this definition is consistent with the context of R.C. 2927.03.

7. **PHYSICAL HARM TO PERSONS.** “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

**COMMENT**

R.C. 2901.01(A)(3).

8. **INTIMIDATE.** “Intimidate” means to frighten, scare, or bully.
9. **ATTEMPT.** An “attempt” occurs when a person knowingly engages in conduct that, if successful, would result in the prohibited (injury) (intimidation) (interference).

**COMMENT**

Drawn from R.C. 2923.02.

10. **FAMILIAL STATUS.** R.C. 2927.03(A), 4112.01(A)(15).

## 11. DISABILITY. R.C. 2927.03(A), 4112.01(A)(13).

## COMMENT

R.C. 2927.03 and R.C. 4112.01 were amended effective 3/17/00 to change the term "handicap" to "disability."

## 12. HOUSING ACCOMMODATIONS. R.C. 4112.01(A)(10).

## 13. AFFORDING. "Affording" means giving, granting or conferring.

## 14. CAUSE. OJI-CR 417.23, OJI-CR 417.25.

## 15. CONCLUSION. OJI-CR 425.01.

## 16. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

## CR 527.11 Desecration R.C. 2927.11

## COMMENT

*Texas v. Johnson* (1989), 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342, held that a conviction for burning a U.S. flag was an unconstitutional suppression of the defendant's expression of political protest. The Court articulated a balancing test: if the interest of the state is not greater than the limitation on expression, the conviction is invalid. The decision could cover all of the items listed in R.C. 2927.11, not just the flag. However, *Johnson* does not prevent prosecution for destruction of property or disorderly conduct even though damage to one of the listed items occurs. *Johnson*, 491 U.S. at 412, 109 S.Ct. at 2544, 105 L.Ed.2d at 359, fn. 8. See also *United States v. Eichman* (1990), 496 U.S. 310, 110 S.Ct. 2404, 110 L.Ed.2d 287.

"[W]hen a criminal offense charged arises from conduct that encompasses both a constitutionally protected act and an act that is not constitutionally protected, failure of the trial court to instruct the jury that it may not consider evidence of the constitutionally protected act as proof of the defendant's guilt is reversible error." *State v. Lessin* (1993), 67 Ohio St.3d 487, at 494, 620 N.E.2d 72, at 78.

1. The defendant is charged with desecration. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant, without privilege to do so, purposely (defaced) (damaged) (polluted) (physically mistreated)

(*Use appropriate alternative*)

(A)(1) the flag of the (United States) (State of Ohio).

(*or*)



(A)(2) a public monument.

(or)

(A)(3) any ([historical] [commemorative] marker) ([structure] [Indian mound or earthwork] [cemetery] [thing] [site] of great [historical] [archeological] interest).

(or)

(A)(4) (a place of worship or its furnishings) ([religious artifacts] [sacred texts] within [a place of worship] [the grounds upon which a place of worship is located]).

(or)

(A)(5) a (work of art) (museum piece).

(or)

(A)(6) (*describe object of [reverence] [sacred devotion]*).

2. PRIVILEGE. "Privilege" means an immunity, license, or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office, or relationship, or growing out of necessity.

**COMMENT**

R.C. 2901.01(A)(12).

3. PURPOSELY. OJI-CR 417.01; R.C. 2901.22(A).

4. DEFACE. "Deface" means to mar the surface.

5. DAMAGE. "Damage" means to cause harm or injury.

6. POLLUTE. "Pollute" means to make foul or unclean, to taint or contaminate.

7. PHYSICALLY MISTREAT. "Physically mistreat" means abuse or mishandle.

8. CEMETERY. "Cemetery" means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains.

**COMMENT**

Drawn from R.C. 2927.11(C).

9. ADDITIONAL FINDINGS:

VALUE. R.C. 2927.11(B).

PHYSICAL HARM. "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not

include wear and tear occasioned by normal use.

**COMMENT**

This additional finding only applies to violations of R.C. 2927.11(A)(4).

10. CONCLUSION. OJI-CR 425.01.

11. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.12 Ethnic intimidation R.C. 2927.12**

**COMMENT**

R.C. 2927.12 was found to be unconstitutional by the Ohio Supreme Court in *State v. Wyant* (1992), 64 Ohio St.3d 566, 597 N.E.2d 450. However, based on the United States Supreme Court's opinion in *Wisconsin v. Mitchell* (1993), 508 U.S. 476, 113 S.Ct. 2194, 124 L.Ed.2d 436, the Ohio Supreme Court reversed their decision and decreed R.C. 2927.12 to be constitutional. *State v. Wyant* (1994), 68 Ohio St.3d 162, 624 N.E.2d 722.

1. The defendant is charged with ethnic intimidation. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant committed the offense of (aggravated menacing) (menacing) (criminal [damaging] [endangering]) (criminal mischief) (telecommunications harassment), by reason of the (race) (color) (religion) (national origin) of (*insert name of person*) (*describe group of persons*).

**COMMENT**

The court will need to instruct the jury on the elements of the underlying offense together with the meaning of pertinent words and phrases.

2. CONCLUSION. OJI-CR 425.01.

3. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.13 Selling or donating contaminated blood R.C. 2927.13**

1. The defendant is charged with selling or donating contaminated blood. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County (*other jurisdiction*), Ohio, the defendant, with knowledge that he/she was a

carrier of a virus that causes acquired immune deficiency syndrome (AIDS), (sold) (donated) his/her (blood) (plasma) (*describe other blood product*) when the defendant (knew) (should have known) that the (blood) (plasma) (*describe other blood product*) was being accepted for the purpose of transfusion to another individual.

2. KNOWLEDGE; KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. SHOULD HAVE KNOWN. The defendant "should have known" that the (blood) (plasma) (*describe other blood product*) was being accepted for the purpose of transfusion to another individual if a reasonably (careful) (prudent) (cautious) person, under the same or similar circumstances, would have known of those facts.

4. CONCLUSION. OJI-CR 425.01.

5. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.22 Misuse of criminal record information R.C. 2927.22 (offenses committed on and after 1/18/18) [Rev. 10/13/18]**

1. The defendant is charged with misuse of criminal record information. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant was engaged in (publishing) (disseminating) criminal record information through (a print) (an electronic) medium and negligently (solicited) (accepted) from (*identify subject individual*) the payment of (a fee) (*describe other consideration*) to (remove) (correct) (modify) (refrain from publishing or otherwise disseminating) criminal record information.

**COMMENT**

Drawn from R.C. 2927.22(B).

Each payment solicited or accepted in violation of R.C. 2927.22(B) constitutes a separate violation. R.C. 2927.22(D).

2. CRIMINAL RECORD INFORMATION. "Criminal record information" means a booking photograph or the name, address, charges filed, or description of a subject individual who is asserted or implied to have engaged in illegal conduct.

**COMMENT**

R.C. 2927.22.

3. BOOKING PHOTOGRAPH. "Booking photograph" means a photograph of a subject individual that was taken in this state by an arresting law enforcement agency.



**COMMENT**

R.C. 2927.22.

4. **SUBJECT INDIVIDUAL.** “Subject individual” means an individual who was arrested and had the individual’s photograph taken by a law enforcement agency during the processing of the arrest.

**COMMENT**

R.C. 2927.22.

5. **LAW ENFORCEMENT AGENCY.** “Law enforcement agency” means a police department, the office of a sheriff, the state highway patrol, a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.

**COMMENT**

R.C. 2927.22, R.C. 109.573.

6. **NEGLIGENTLY.** OJI-CR 417.19; R.C. 2901.22(D).

**COMMENT**

Negligently includes conduct that is recklessly, knowingly, or purposely performed.  
R.C. 2901.22(E).

7. **CONCLUSION.** OJI-CR 425.01.

8. **CONCLUSION WITH LESSER INCLUDED OFFENSE.** OJI-CR 425.09, OJI-CR 425.11.

**CR 527.24 Unlawful advertising of massage R.C. 2927.17 (offenses committed on and after 6/20/14) [Rev. 10/3/15]**

1. The defendant is charged with unlawful advertising of massage. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ (County) (*other jurisdiction*), Ohio, the defendant by means of a (statement) (solicitation) (offer) in a/an ([print] [electronic] publication) (sign) (placard) (storefront display) (*describe other medium*) advertised (massage) (relaxation massage) (*describe other massage technique or method*) (*describe other related service*) with the suggestion or promise of sexual activity.

**COMMENT**

The Committee believes R.C. 2927.17 imposes strict liability. R.C. 2901.21(B).

2. SEXUAL ACTIVITY. OJI-CR 417.39 § 1.
3. SEXUAL CONDUCT. OJI-CR 417.39 § 2.
4. SEXUAL CONTACT. OJI-CR 417.39 § 7.
5. CONCLUSION. OJI-CR 425.01.
6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.24(B) Contaminating substance for human consumption or use R.C. 2927.24(B)**

1. The defendant is charged with contaminating a substance for human consumption or use. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant knowingly

*(Use appropriate alternative)*

(B)(1) mingled a (poison) *(describe harmful substance)* with a (food) (drink) *(describe nonprescription drug) (describe prescription drug) (describe pharmaceutical product)* when the defendant (knew) (had reason to know) that the (food) (drink) *(describe nonprescription drug) (describe prescription drug) (describe pharmaceutical product)* may be (ingested) (used) by another person.

*(or)*

(B)(2) placed a (poison) *(describe harmful substance)* in a (spring) (well) (reservoir) (public water supply) when the defendant (knew) (had reason to know) that the water may be (ingested) (used) by another person.

**COMMENT**

For a discussion regarding what may constitute a "harmful substance", see *State v. Venditti* (1999), 134 Ohio App.3d 326, 731 N.E.2d 184.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).
3. POISON. "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

**COMMENT**

R.C. 3719.01.

4. DRUG. R.C. 4729.01.

5. AFFIRMATIVE DEFENSE:

(A) GENERAL. OJI-CR 417.27.

(B) PRESCRIPTION. R.C. 2927.24(D)(1). The defendant claims that at the time of the offense, he/she mingled a drug with a food or drink for the purpose of causing the drug to be ingested or used in the quantity described by its labeling or prescription.

(C) NECESSARY TO TREAT WATER SUPPLY. R.C. 2927.24(D)(2). The defendant claims that at the time of the offense, he/she placed a poison or other harmful substance in a (spring) (well) (reservoir) (public water supply) in such quantity as was necessary to treat the (spring) (well) (reservoir) (water supply) to make it safe for human consumption and use.

6. ADDITIONAL FINDINGS:

AMOUNT SUFFICIENT TO CAUSE DEATH. R.C. 2927.24(E)(1).

SERIOUS PHYSICAL HARM TO PERSONS. R.C. 2927.24(E)(1), 2901.01(A)(5).

7. CONCLUSION. OJI-CR 425.01.

8. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CR 425.03

9. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.24(C) Spreading a false report of contamination. R.C. 2927.24(C)**

1. The defendant is charged with spreading a false report of contamination. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in \_\_\_\_\_ County, Ohio, the defendant informed another person that a (poison) (*describe harmful substance*) (had been) (would be) be placed in a (food) (drink) (*describe nonprescription drug*) (*describe prescription drug*) (*describe pharmaceutical product*) (spring) (well) (reservoir) (public water supply) knowing that the information is false and that the information was likely to be disseminated to the public.

2. KNOWINGLY. OJI-CR 417.11; R.C. 2901.22(B).

3. POISON. "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

**COMMENT**

R.C. 3719.01.

4. DRUG. R.C. 4729.01.

5. CONCLUSION. OJI-CR 425.01.



6. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.27(A) Illegal bail bond agent practices. R.C. 2927.27(A) (offenses committed on and after 10/09/01)**

1. The defendant is charged with illegal bail bond agent practices. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (other jurisdiction), Ohio, the defendant was not a law enforcement officer and recklessly (apprehended) (detained) (arrested) (*insert name of principal on bond*).

**COMMENT**

The Committee believes the criteria listed in R.C. 2927.27(A)(1)–(3) are questions of law.

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *State v. Collins*, 89 Ohio St.3d 524, 2000–Ohio–231, 733 N.E.2d 1118; but see *State v. Maxwell*, 95 Ohio St.3d 254, 2002–Ohio–2121.

3. CONCLUSION. OJI-CR 425.01.

4. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

**CR 527.27(B) Illegal bail bond agent practices R.C. 2927.27(B) (offenses committed on and after 10/09/01)**

1. The defendant is charged with illegal bail bond agent practices. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and in \_\_\_\_\_ County (other jurisdiction), Ohio, the defendant recklessly represented himself/herself to be a (bail enforcement agent) (bounty hunter) (*describe other similar title*).

2. RECKLESSLY. OJI-CR 417.17; R.C. 2901.22(C).

**COMMENT**

The Committee believes that the required culpable mental state is recklessness. R.C. 2901.21(B). *State v. Collins*, 89 Ohio St.3d 524, 2000–Ohio–231, 733 N.E.2d 1118; but see *State v. Maxwell*, 95 Ohio St.3d 254, 2002–Ohio–2121.

3. CONCLUSION. OJI-CR 425.01.

4. CONCLUSION WITH LESSER INCLUDED OFFENSE. OJI-CR 425.09, OJI-CR 425.11.

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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## Sample final instructions

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